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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

NO. 216

IN RE: ESTATE OF
CORA HUBBARD WILLIAMS

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA AND APPENDIX

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INDEX TO PETITION

	PAGE
Petition for Writ of Certiorari	1
No Opinions Below	2
Jurisdiction	2
Questions Presented	2
Constitutional Provision Involved	3
Statement of the Case	4
Reasons Relied on for the Reliance of the Writ	16
1. The Pennsylvania Supreme Court Has Erroneously Decided A Federal Question Of Substance Not In Accord With Applicable Decisions Of This Honorable Court.	16
2. This Is A Cause Of Public Importance	19
Conclusion	20

INDEX TO APPENDIX

Notice of Presentation of Petition	1
Petition for Change of Venue and for Oral Argument Hereon	2
Order of Pennsylvania Supreme Court	11

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IN RE: ESTATE OF
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Cora Hubbard Williams, respectfully prays that a writ of certiorari issue in the above captioned case directed to the Supreme Court of Pennsylvania to review that Court's Judgment (App. 11) dated and entered on March 21, 1963, in proceedings at Miscellaneous Docket No. 2483, whereby the highest judicial tribunal of the Commonwealth of Pennsylvania erroneously denied her Petition for Change of Venue (App. 2-11).

Questions Presented.

NO OPINIONS BELOW

The Order of the Supreme Court of Pennsylvania (App. 11) sought to be reviewed herein was not accompanied by an opinion, and is not reported.

JURISDICTION

The jurisdiction of this Honorable Court is invoked under 28 U.S.C.A., Section 1257 (3).

The Judgment of the Supreme Court of Pennsylvania (App. 11) sought to be reviewed herein was dated and entered on March 21, 1963. The time for filing this petition for writ of certiorari, therefore, expires on June 19, 1963.

QUESTIONS PRESENTED

1. Does not a litigant have the right to be heard in advance of judgment, pursuant to the provisions of the Fourteenth Amendment to the Constitution of the United States?

2. When the State Courts have deprived a citizen of the right to be heard in advance of judgment, have not those State Courts deprived such litigant of property without due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States?

3. When the trial Court of a state unlawfully has denied a litigant the right to a hearing on the issue of fraud in the procurement of an adjudication of incompetency, and the highest judicial tribunal of that state,

which sanctioned such denial of hearing, has the authority and power in an original proceeding to change the venue of the cause but refuses to do so; has not the litigant thus been deprived of property and individual liberties without due process of law in violation of the provisions of the Fourteenth Amendmen to the Constitution of the United States?

4. Should not a Pennsylvania State Supreme Court Judgment, whereby a citizen has been deprived of property and important rights without due process of law, be reviewed and reversed by this Honorable Court?

CONSTITUTIONAL PROVISION INVOLVED

The provision of the Constitution of the United States involved herein is the Fourteenth Amendment, the pertinent portion of which is as follows:

"AMENDMENT XIV

Section I. . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law. . . ."

STATEMENT OF THE CASE

The petitioner, Cora Hubbard Williams, seeks a review of the Judgment (App. 11) of the Supreme Court of Pennsylvania, which is the highest judicial tribunal of the Commonwealth of Pennsylvania, whereby her Petition for Change of Venue (App. 2-11) was denied.

Through her Petition for Change of Venue Mrs. Williams of Pittsburgh, Pennsylvania, sought an order in the Pennsylvania Supreme Court that a certain proceeding at No. 2750 of 1955 in the Orphans' Court of Allegheny County, Pennsylvania, be transferred to another county of the vicinage or, in the alternative, that an Orphans' Court Judge of another county in Pennsylvania be assigned to Allegheny County to hear the matter, because of the local Court's prejudice.

The said Orphans' Court proceeding was entitled In Re: Estate of Cora Hubbard Williams, an alleged incompetent. The proceeding was instigated by her daughter (and only child) and commenced on June 20, 1955, through the daughter's Petition for Appointment of Guardians for the Estate of an Alleged Incompetent purportedly pursuant to the Pennsylvania Incompetents' Estates Act. At that time petitioner's daughter was Miss Cora Maltz Williams. Since her marriage in September of 1956 to one Britton Murdoch, she has been and is now known as Mrs. Cora Williams Murdoch, and resides at Haverford, Pennsylvania.

The expressed and only allowable purpose of such a proceeding is to protect the alleged incompetent's Estate from designing persons. Your petitioner analogously cited to the Pennsylvania State Courts' authorities

wherein the Pennsylvania Supreme Court (App. 3) had repeatedly pronounced the dangers of the Incompetents' Estates Act and decided that it is "easily capable of abuse by designing relatives to accomplish the very wrong intended to be guarded against"; and held in *Bryden's Estate* (App. 3) that "This is a very clear case of attempt by children to take their mother's property out of her control not in her interest but in their own, and is an illustration of the dangers of the statute". The truth, however, about your conservative petitioner is that she had never been the victim of designing persons until she became the victim of her designing daughter, and those in combination with her, through the State Court proceedings.

For a considerable time prior to the commencement of said proceeding, the petitioner's wayward daughter had been scheming and planning the maneuvers by which she would obtain possession and control of her mother's multi-million dollar Estate, although your petitioner had already established a $300,000.00 trust fund at the Mellon National Bank and Trust Company which would provide a life income to her daughter of about $1,000.00 per month.

Petitioner's daughter engaged the services of her close friend and a then Philadelphia attorney (who had been a member of the Bar for only a few months), James B. Craig, Esquire, who unfortunately was an alcoholic. Together they planned a fraudulent adjudication of incompetency against your petitioner, to be followed by her ultimate confinement in the "care" of Attorney Craig's own psychiatrist in Philadelphia. While their scheme was still in the planning stage during the latter

part of May, 1955, your petitioner was mistakenly and wrongfully incarcerated in the New Jersey State Hospital for the Insane at Trenton, as the result of a drinking problem which had become aggravated by reason of her daughter's lack of affection, infidelity and even hatred toward your petitioner and her relatives. Incidentally, immediately after the commencement of Mrs. Williams' confinement, her drinking problem completely ceased.

Prior to this incarceration, the petitioner's daughter had tried to persuade the next nearest relative who was about to leave the country, to join with her in the Petition under the Incompetents' Estates Act, but she flatly refused to do so, stating that she would not become a party to such a shameful, wrongful and disgraceful proceeding. Accordingly, the daughter hastened to present her own Petition and procure the adjudication against her mother before the return to this country of the said next nearest relative. Thus the daughter's said Petition was presented to President Judge Hugh C. Boyle of the Orphans' Court on June 20, 1955, and the hearing thereon was had on July 6, 1955.

The hearing of July 6, 1955, pursuant to which the adjudication of incompetency was made was an *ex parte* hearing, with no Pittsburghers present. The daughter's testimony consisted of falsehoods, half truths, distortions and other misleading statements in reply to leading questions. The "medical" testimony was offered by foreigners to this jurisdiction who had never before known Mrs. Williams and really did not know her then. Nonetheless the doctors who appeared testified to erroneous diagnoses and prognoses, all of which have been completely and entirely refuted if only by the passage of

time and by the excellent mental condition and reasonably good physical condition of your petitioner. The most fantastic refutation of that "medical" testimony could be established by Mrs. Williams and a witness to the fact that the principal witness produced thereat by Mrs. Williams' daughter with the cooperation of said Attorney Craig, subsequently admitted that your petitioner had not been detained and restrained by him because of any medical problem whatever, but only in order to prevent Mrs. Williams from interfering with the prosecution by her daughter of distasteful and ill conceived litigation against Mrs. Williams' family.

At the conclusion of the said hearing, President Judge Hugh C. Boyle of the Orphans' Court appointed the petitioner's daughter and the Mellon National Bank and Trust Company as co-guardians of this Estate. *It should be noted that no guardian of the petitioner's person was then or ever has been sought or appointed.*

Promptly after the said guardianship appointment, the Mellon National Bank and Trust Company became apprised of previously undisclosed litigation which the co-guardian (petitioner's daughter) had planned to prosecute against members of your petitioner's family against the will and better judgment of petitioner. Thereupon the Mellon Bank immediately withdrew as a co-guardian of this Estate, because it would not, or could not by reason of a conflicting interest, maintain such ill considered litigation; and after the Pittsburgh National Bank and the Union National Bank of Pittsburgh declined to accept an appointment as a substituted co-guardian, the only remaining one, Commonwealth Bank and Trust Company, readily accepted the appointment

in October of 1955 to act as co-guardian with petitioner's daughter.

Ever since this joint venture by Cora Williams Murdoch and the Commonwealth Bank and Trust Company as the co-guardians of your petitioner's Estate, they and their agents have been raiding the Estate for excessive commissions, fees and other unwarranted compensation. As a matter of fact, at the time of the marriage of petitioner's daughter, gifts in excess of $160,000.00 were illegally disbursed from this Estate to petitioner's daughter so that she could purchase a mansion in Haverford, Pennsylvania, where she and her husband could and do live luxuriously, while your petitioner has been and is unlawfully and improperly restricted to a mere fraction of her income, with the result that she is unable to live in the manner to which she has always been accustomed. Although it is provided in the Incompetents' Estates Act that gifts cannot be made from the Estate of an incompetent and the cases thereunder so hold, nevertheless the President Judge Hugh C. Boyle for the Orphans' Court approved the gift disbursements.

Far more serious than the deprivations of your petitioner's right to the beneficial use and enjoyment of her Estate, are the dastardly and nefarious deprivations of her individual liberties which naturally would result and flow from such an adjudication of incompetency.

The foregoing background and factual situation form an adequate basis of the procedural matters leading up to your petitioner's urgent need for the granting of her Petition for Change of Venue.

During the more than six weeks of your petitioner's incarceration in the New Jersey State Hospital, her

daughter never visited her; but instead devoted her time to the planning of the incompetency proceeding to get possession and control of petitioner's multi-million dollar Estate, so that she could selfishly and greedily preserve it for herself. Although the daughter had sworn in her Orphans' Court Petition that she had no interests adverse to her mother and actually was thus proceeding for the benefit of her mother and the Estate, all of her actions and activities subsequent thereto showed that she was really hostile to her mother and was motivated entirely by her own greed and for her selfish financial gain.

The chief psychiatrist at the New Jersey State Hospital advised your petitioner that about one month as a patient (with in and out privileges) at Fairmount Farms would be quite adequate to restore her health. Your petitioner, however, was persuaded and inveigled through intimidation and threats of a Court order for the appointment of a guardian of her person, to submit to her daughter's scheme to be placed in the "care" of said Attorney Craig's psychiatrist in Philadelphia (the one who later admitted to your petitioner that she had not been detained because of any mental problem but only to prevent her from interfering with the above mentioned ill considered litigation that her daughter was determined to prosecute) and others subsequently. As a result, your petitioner was kept in restraint for more than four years, during which time she was deliberately doped and drugged by means of excessive and unnecessary medication and sedation.

At this point, the well laid plans of petitioner's daughter and those in combination with her, were getting out of hand, because your petitioner was surviving

the cruel and barbarous mistreatment she was getting and the situation was becoming too well known. Relatives and friends who would have come to petitioner's rescue sooner but for warnings that the "treatment" being administered was required and should not be interfered with, were becoming aware of the fact that they had been misinformed and misled. Thus the only thing left for the daughter to do, was let her mother return to her home in Pittsburgh and await future events.

After returning to her Pittsburgh house, it took a considerably long time for the execessive and unnecessary drugs and sedation to wear off, but petitioner's resulting condition in due course completely cleared up. Consequently your petitioner has since then been leading quite a normal and undisturbed life with her relatives and many friends. Naturally she has been consulting with Pittsburgh attorneys and physicians. Reputable physicians have expressed surprise that anybody could have survived such excessive amounts of sedation and medication, as your petitioner did. Attorneys have advised her that she had two alternative remedies in the Orphans' Court—first, through a petition to vacate the incompetency adjudication on the ground that it was procured through the fraud and misconduct of her daughter and those in combination with her, and second, through a petition for an adjudication of competency. Petitioner preferred the first remedy, but was prevailed upon by prior counsel to seek the second one, being advised that the Orphans' Court would not entertain a petition for a hearing on the issue of fraud.

Cora Hubbard Williams through her former counsel thus was ready, able and willing to establish her

competency about two years ago. Her Petition was well prepared, and very reputable psychiatrists were ready to support it with positive testimony of her competency. Surprisingly, President Judge Boyle of the Orphans' Court would consider it only on his own terms and conditions, *viz.*, that she first submit to re-examination by all of the hostile and adversary psychiatrists so that their testimony too could be produced. Your petitioner refused so to submit, and thereupon she abandoned that proceeding.

Being convinced that she was correct in her original judgment, that the consummately just and proper way in which to proceed was by attacking the fraudulent adjudication of incompetency on the ground that it was procured through fraud, petitioner retained her present counsel after the withdrawal of her prior counsel.

Counsel for Cora Hubbard Williams thereupon promptly prepared Petitions for presentation to the Orphans' Court, seeking a hearing on the alleged fraud and misconduct in the procurement of the adjudication of incompetency. The result should have been a routine issuance of a citation directed to the co-guardians of the Estate as respondents to show cause, if any, why the adjudication should not be set aside and vacated, the co-guardians dismissed, and an accounting filed. President Judge Boyle returned to counsel for Mrs. Williams all but one of those Petitions, which one he passed upon reluctantly. In "passing upon" that Petition, the jurist dismissed it without requiring an answer, and obviously in advance of a hearing. *It was this judgment in advance of the right to be heard which necessitated the further litigation.*

Mrs. Williams had alleged and expected to be able to prove that she was not personally served with a copy of her daughter's Petition and notice of said hearing, as required by the Incompetents' Estates Act and by the Order of Court setting the aforesaid hearing for July 6, 1955; *and further that she was unlawfully deprived of her right to be present with counsel and opposing witnesses;* and furthermore, that had the witnesses who appeared at the hearing on July 6, 1955, been apprised that they would be subjected to cross examination and opposing witnesses, they would have testified differently or would not have appeared at all, partially supportable by the above mentioned admission of the principal witness that Mrs. Williams had not been detained and restrained because of any mental illness, and fully supportable through *expert* medical testimony. *It was concurrently alleged by Mrs. Williams that she was thus deprived of her guaranteed rights under the Constitution and laws of the United States.*

After the erroneous dismissal of Mrs. Williams' Petition by the Orphans' Court, as aforesaid, on June 29, 1962, she proceeded promptly on July 2, 1962, for a review in the Supreme Court of Pennsylvania at No. 2428 Miscellaneous Docket. Although her authoritatively self-sustaining application to the Pennsylvania Supreme Court made it plain that the cause should be reviewed and reversed or remanded with directions to set a hearing on the issue of fraud, nevertheless that Court entered an erroneous Order granting the co-guardians' Motion to Quash. *It was alleged therein too that your petitioner was being deprived of her guaranteed rights under the Constitution and laws of the United States.*

It was argued in the State Courts on behalf of Mrs. Williams that even if it was thought that she could not establish the fraud, no American Court should deprive her of the right to try.

Mrs. Williams thereupon proceeded in the Pennsylvania Supreme Court with the instant Petition for Change of Venue and for Oral Argument Hereon (App. 2-11). On March 19, 1963, the oral argument was heard as noticed (App. 1) at Pittsburgh on behalf of your petitioner only, the respondents failing to appear. In the course of the argument, it was submitted as alleged in paragraph 19 of the Petition (App. 9), that the reasons for the relief sought were far more compelling than the usual and accepted reasons for change of venue, because customarily changes of venue are ordered in cases where prejudice prevents a fair trial or an impartial hearing. In the instant case, incredible as it may seem, the need for the relief sought resulted from an astonishing, unheard of prejudice by reason of which the very hearing itself was unobtainable. *Thus your petitioner was justified in arguing that the denial of such a hearing in and of itself automatically constituted prejudice, whether deliberate or not.*

The said Petition for Change of Venue was authoritatively self-sustaining and should have been granted. Otherwise, as alleged in paragraph 18 (App. 9), "the deprivations of petitioner's property and individual liberties without due process of law will be perpetuated". Nonetheless, the then unanswered and undenied Petition for Change of Venue was denied by Order of Court (App. 11) dated and entered on March 21, 1963.

It is evident from paragraphs 15, 16 and 17 of the Petition for Change of Venue (App. 7-9) that Cora Hubbard Williams was gravely in need of the exercise by the Pennsylvania Supreme Court of its powers of the English Court of King's Bench; and that the Supreme Court of Pennsylvania can change venue in such cases on original jurisdiction "to direct this case to be heard by some Judge against whom no question of prejudgment can be urged" (App. 8); and that these powers of the Pennsylvania Supreme Court are derived from the Act of May 22, 1772, 1 Sm. L. 131, Section 13, as enlarged by the Act of June 16, 1836, P.L. 784, Section 1 (App. 8), 17 Purdon's Penna. Statutes Annotated, section 41.

It follows from the fact that petitioner's Petition for Change of Venue in the Pennsylvania Supreme Court was an original proceeding, that the only record necessary for this Honorable Court's consideration is the record in that Court; and the only proper matter of record therein is the said Petition appended hereto (App. 2-11) and the Order (App. 11) entered thereon.

It should be pointed out to this Honorable Court that every attempt and effort on the part of your petitioner to obtain a hearing on the issue of fraud has been opposed by the co-guardians of her Estate who actually are the respondents. These wrongful activities and adversary efforts on the part of the involved Cora Williams Murdoch and the Commonwealth Bank and Trust Company are in direct conflict with their sworn obligations and duties to proceed and act for the best interests of your petitioner and her Estate. Thus Mrs. Cora Hubbard Williams is justified in arguing *a fortiori* that the Pennsylvania State Courts are prejudiced

against her and her cause and in favor of her adversaries; as otherwise the respondents should join in petitioner's prayer for a hearing, and failing to do so, unprejudiced Courts would order the hearing.

After the Orphans' Court of Allegheny County and the Supreme Court of Pennsylvania had positively refused to protect and enforce your petitioner's constitutional and legal right to a hearing on the issue of the fraud in the procurement of the incompetency adjudication against her, followed by the Pennsylvania Supreme Court's refusal of her right to a change of venue (none of which State Courts adjudicated the federal question relating to the denials of the deprivations of your petitioner's property and individual liberties without due process of law), Mrs. Cora Hubbard Willims has no legal alternative but to present the instant Petition for a writ of certiorari.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

I. The Pennsylvania Supreme Court Has Erroneously Decided A Federal Question Of Substance Not In Accord With Applicable Decisions Of This Honorable Court.

The federal question of substance is whether or not a litigant has the right to a change of venue when the Court of original jurisdiction has deprived her of the right to be heard in advance of judgment; and whether or not the denial of change of venue, which *ipso facto* perpetuates the denial of the right to be heard in advance of judgment, constitutes a denial of due process of law in violation of the Fourteenth Amendment to the Constitution.

The Pennsylvania Supreme Court which had previously sanctioned the decision of the Orphans' Court of Allegheny County, Pennsylvania, whereby Mrs. Williams was denied her constitutional and legal right to a hearing on the issue of fraud in the procurement of an adjudication of incompetency against her, entered its judgment (App. 11) denying Mrs. Williams' Petition for Change of Venue (App. 2). It is respectfully submitted that in so doing, the Pennsylvania Supreme Court decided that federal question of substance not in accord with applicable decisions of this Honorable Court.

It is elementary that the right to be heard in advance of judgment is the most fundamental of due process of law, and no authorities need be cited in support of this proposition. *It necessarily follows that a*

denial of change of venue which perpetuates the refusal of a litigant's right to a hearing on the issue of fraud constitutes a deprivation of the right to due process of law. Thus your petitioner, being the victim of such deprivations, is desperately in need of the protection and enforcement of her rights to due process of law as guaranteed by the Fourteenth Amendment.

The Petitions presented on behalf of Mrs. Cora Hubbard Williams, petitioner, in the Orphans' Court of Allegheny County, Pennsylvania, and in the Supreme Court of Pennsylvania sought a hearing on the issue of fraud in the procurement of an adjudication of incompetency, whereby guardians of her Estate (but not of her person) were appointed.

Mrs. Williams had alleged therein that she was not given notice and the right to be heard in that *ex parte* proceeding; that had she been properly notified and afforded her right to be present with counsel, the adjudication of incompetency would not have been entered against her; that had the adversary witnesses at the *ex parte* hearing been on notice that they would be subjected to cross examination and opposing witnesses, their testimony would have been different or they would not have appeared at all; that the "medical" testimony at the *ex parte* hearing consisted of unsupported and insupportable diagnoses and prognoses by doctors who were neither competent nor qualified to offer such diagnoses and prognoses concerning your petitioner; and that the testimony of her unbalanced daughter, who had selfishly and for her own unjust enrichment instigated and prosecuted the incompetency proceeding to procure the possession and control of petitioner's multi-

million dollar Estate, consisted of falsehoods, half truths, distortions and other misleading statements in reply to leading questions. Furthermore, your petitioner had never become the victim of designing persons, positive proof of which is essential in a proceeding under the Pennsylvania Incompetents' Estates Act, the sole purpose of which is to protect the Estates of incompetents from designing persons.

Mrs. Williams has certainly done all possible in the State Courts to try to obtain a hearing on the issue of fraud. There is no question that the Judges of the Orphans' Court and the Justices of the Pennsylvania Supreme Court knew precisely what relief was sought from them by Mrs. Williams. Similarly there is no doubt that they will never grant that hearing to which she is entitled unless they are compelled to do so by this highest judicial tribunal.

It is understandable why the respondent co-guardians have repeatedly opposed any such hearing, because they are involved. But why have the jurists repeatedly refused to grant the hearing? Since they have no interest in the outcome, why do they not let Mrs. Williams proceed? If for some unjustifiable reason those State jurists believe that Mrs. Williams cannot establish the fraud, they nevertheless have no authority to deprive her of the right to try. This is a right which they did not give to Mrs. Williams and cannot take away from her. This right was bestowed through the Fourteenth Amendment which all of the jurists have sworn to uphold.

Mrs. Williams has obviously been deprived of substantial property and her individual liberties without due process of law; *but is not the taking of one's property and rights through a fraudulent incompetency adjudica-*

tion the lowest form of taking? When such a victim is not afforded her right to be heard on the fraud issue, is she not permanently trapped? Under such circumstances, should not the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States come to her rescue?

II. This Is a Cause Of Public Importance.

The judgment sought to be reviewed, if not reversed, could adversely affect the constitutional and legal rights of all. The vicious detriment to your petitioner is incidental to that of the public. If the instant deprivations of property and individual liberties without due process of law could be inflicted upon one who has enjoyed the financial and social position of Mrs. Cora Hubbard Williams, then they could be visited upon anybody. Thus it is respectfully submitted that this Petition is not the sort of application for relief which this Honorable Court might view as a matter personal only to Mrs. Williams; but rather as a matter generally disaffecting the constitutional and legal rights of the public, and, therefore, requiring a reversal by this Honorable Court.

It is bad enough to proceed with an ex parte incompetency hearing pursuant to which a person's multi-million dollar Estate is taken; but it is far worse to refuse the victim a hearing on the issue of fraud in the procurement of the incompetency adjudication, when the fraud is subsequently brought to the attention of the Court. What other prejudgment could be more cruel or unconstitutional? What other prejudgment should more quickly shock the Court's conscience into protecting and enforcing the victim's federally guaranteed right to due process of law under the Fourteenth Amendment?

CONCLUSION

The reasons relied on for the allowance of the writ are cogent and impelling.

The Pennsylvania Supreme Court has erroneously decided, but not adjudicated, a federal question under the Fourteenth Amendment not in accord with applicable decisions of this Honorable Court, with the result that your petitioner has been deprived of a hearing on an issue of gross fraud whereat she could defend herself from an unconstitutional and unlawful taking of substantial property and her individual liberties without due process of law. This cause is one of public importance and should be viewed as one in which the benefits to your petitioner from the sought review and reversal are only incidental to those of the public in general. Furthermore, the judgment sought to be reviewed so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision.

Wherefore, this Petition for a writ of certiorari should be granted.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania

APPENDIX

SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

IN RE: ESTATE OF CORA HUBBARD WILLIAMS, an alleged incompetent.	Misc. Dkt. No. 2483. Petition Sur Proceedings in the Orphans' Court of Allegheny County at No. 2750 of 1955.

NOTICE

To: Robert W. Duggan, Esquire
1408 Frick Building
Pittsburgh 19, Pennsylvania
and
John Stewart, Jr., Esquire
1606 Philadelphia National Bank Building
Philadelphia 7, Pennsylvania

PLEASE TAKE NOTICE that Cora Hubbard Williams' Petition for Change of Venue and for Oral Argument Hereon has been filed in the above entitled matter; that the said Petition will be presented to the Pennsylvania Supreme Court, 8th Floor, City-County Building, Pittsburgh, Pennsylvania, on Tuesday, March 19, 1963, at ten o'clock A.M., or as soon thereafter as counsel can be heard; and it is required that an Answer to the said Petition be filed prior to the presentation thereof, if an Answer will be filed.

Paul Ginsburg, Attorney for Petitioner
Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania
412-471-6060

PETITION FOR CHANGE OF VENUE AND FOR ORAL ARGUMENT HEREON

To the Honorable, the Chief Justice of Pennsylvania and the Associate Justices of the Supreme Court of Pennsylvania:

The Petition for Change of Venue of Cora Hubbard Williams, petitioner, respectfully represents:

1. She is a citizen and resident of the City of Pittsburgh, County of Allegheny and Commonwealth of Pennsylvania.

2. On July 6, 1955, President Judge Hugh C. Boyle of the Orphans' Court of Allegheny County entered an erroneous Order of Court pursuant to an *ex parte* Hearing in the above entitled proceedings whereby your petitioner was adjudicated an incompetent and guardians were appointed for her multi-million dollar Estate.

3. The said incompetency proceedings were unlawfully instigated by petitioner's daughter, Cora Williams Murdoch, who, together with the Commonwealth Bank and Trust Company, became Court appointed co-guardians of petitioner's Estate.

4. The expressed purpose of those proceedings was, of course, to protect your petitioner and her Estate from becoming the victim of designing persons; but your petitioner had never become the victim of designing persons, as was apparent from the record in the above entitled proceedings and particularly the testimony therein of petitioner's daughter, your petitioner never even having spent her net income. As a matter of fact, the provisions of the Incompetents' Estates Act were deliberately misused by petitioner's daughter and others in combination

with her to defeat the real purposes of that Act, and actually they were the designing persons who victimized your petitioner for the nefarious purpose of gaining illegal control of petitioner's multi-million dollar Estate so that it could be preserved for the petitioner's daughter, and in the meantime misused for the unjust enrichment of the said co-guardians of the Estate and those in combination with them. Such abuse of the Incompetents' Estates Act was the very thing over which this Honorable Court had expressed grave concern and particularly in *Colt's Case*, 215 Pa. 333. In that case, this Honorable Court cited *Hoffman's Estate*, 209 Pa. 357, wherein the then Chief Justice stated that it is a "dangerous Statute easily capable of abuse by designing relatives to accomplish the very wrong intended to be guarded against, and therefore to be administered by the courts with the utmost caution and conservatism". See also *Bryden's Estate*, 211 Pa. 633, wherein this Honorable Court stated: "This is a very clear case of attempt by children to take their mother's property out of her control not in her interest but in their own, and is an illustration of the dangers of the statute".

5. As a result of the unlawful activities of petitioner's daughter and those in combination with her, excessive medication and drugs were unnecessarily and unprofessionally administered to your petitioner so that she could not be present herself and with counsel and witnesses at the hasty Hearing held on July 6, 1955; false representations were made in and out of the lower Court concerning petitioner and her health; false and insupportable diagnoses were offered at said Hearing in the lower Court, all by foreigners to this jurisdiction who had never before known your petitioner, which diagnoses

have been positively refuted by the very passage of time and the presently excellent condition enjoyed by your petitioner during the past few years since her release from unlawful restraint.

6. Had the adversary witnesses at the Hearing of July 6, 1955, known or been advised that they would have been subjected to cross examination and opposing witnesses, they would not have testified as they did.

7. Your petitioner is not an incompetent, and has never been legally adjudicated an incompetent.

8. The adjudication of incompetency erroneously entered in the lower Court by the Honorable Hugh C. Boyle was obtained through the fraud and misconduct of Petitioner's daughter and those in combination with her, with the result that said adjudication is void and of no effect.

9. The said adjudication of incompetency was entered in violation of petitioner's rights under the Constitution and laws of the United States because she was not legally served with notice of the Hearing and obviously was deprived of the right to be represented and heard. Notice and the right to be heard in advance of judgment are the fundamentals of due process of law. See *Covey, Committee v. Town of Somers*, 351 U.S. 141, wherein the Supreme Court of the United States quoted from *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-315, as follows: "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them on opportunity to present their objections. . . .

Appendix.

When notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." See also *Commonwealth v. Groh*, 10 Pa. C.C. 557, wherein it was held that failure to give notice is sufficient cause to set aside lunacy proceedings; and the appointment of a committee was revoked and the proceedings set aside.

10. It is respectfully submitted that an Opinion expressed by the late Chief Justice Maxey in the case of *Denner v. Beyer*, 352 Pa. 386, 1945, is quite pertinent and applicable to the instant situation. In reversing a lower Court decision for an alleged weak-minded person, Chief Justice Maxey declared: "It is a serious thing to deprive any person of the control of their own property or of their right to dispose of it by will. This right will be judicially taken away from a person only after preponderating proof of his lack of mental capacity to manage his own business affairs. There is no such proof in this record. In fact, the proof strongly preponderates in favor of this respondent. If later she exhibits such feeble mindedness or mental defectiveness as is likely to result in the dissipation or loss of her property, the courts are open for appropriate proceedings."

11. Your petitioner's daughter, in her original Petition pursuant to which said Hearing of July 6, 1955, was had, untruthfully swore that her interests were not adverse to those of her mother, which allegation has been refuted throughout the lower Court proceedings by her repeated adversary activities, such as obtaining illegal gifts from her mother's Estate in excess of $160,000.00 and otherwise unjustly enriching herself,

while depriving her mother of adequate income from the Estate so that she may continue to live in the manner to which she was always accustomed, as well as by lending her best efforts to perpetuating the shameful proceedings against her mother. It is elementary that proceedings such as the instant one in the lower Court, are not to be adversary proceedings but should be brought only in the best interests of the one whose property is to be protected. Nevertheless, these co-guardians of your petitioner's Estate have been adversary to your petitioner throughout these entire proceedings, and have been acting strictly in their own selfish interests. Your petitioner's daughter, Cora Williams Murdoch, is a resident of Haverford, Montgomery County, Pennsylvania. The co-guardian Commonwealth Bank and Trust Company is a corporation engaged in the banking and trust business, with its principal office at 312 Fourth Avenue, Pittsburgh 22, Pennsylvania.

12. All of the foregoing averments of fact were brought to the attention of President Judge Boyle of the Orphans' Court in Petitions presented on behalf of Cora Hubbard Williams, the purpose being to have a hearing wherein your petitioner would be afforded the opportunity to establish the fraud and misconduct of her adversaries. The Honorable Hugh C. Boyle, however, refused to allow the alleged incompetent the usual and ordinary processes of that Court by refusing to permit the filing and or consideration of Petitions on her behalf. Had your petitioner been afforded such a hearing, she not only could have established that the said adjudication of incompetency was and is void for the fraud and misconduct of her adversaries; but also that the original Petition of her daughter, pursuant to which the adjudi-

cation was made, should have been stricken off for the failure of its verification to comply with and conform to the provisions of Rule 1024 (a) of the Pennsylvania Rules of Civil Procedure.

13. About two years prior to those denials of due process of law, Judge Boyle actually refused to entertain Mrs. Williams' Petition for restoration of competency, unless on his own terms and conditions which might very likely interfere with his favorable consideration of that Petition.

14. It is respectfully submitted that the prejudiced Honorable Hugh C. Boyle has refused to afford your petitioner her legal and constitutional right to a hearing on the said issue of fraud and misconduct of her adversaries, and has made it plain that he will continue to do so. It is further submitted that the prejudiced Orphans' Court Judge Boyle has refused to allow your petitioner a hearing on the issue of restoration of competency, except on his own detrimental terms and conditions, and has made it plain that he will continue to do so. Furthermore, none of the other Orphans' Court Judges will hear or even entertain any matter in connection with the said proceedings for the reason that it is Judge Boyle's case. It necessarily follows that your petitioner has been and is foreclosed from seeking and establishing any of her legal and constitutional rights in the prejudiced Orphans' Court of Allegheny County.

15. In view of the foregoing, Cora Hubbard Williams, petitioner, is gravely in need of the exercise of this Honorable Court's powers of the English Court of King's Bench, to the end that this Honorable Court will

enter an Order changing the venue of the said Orphans' Court proceeding.

16. The Supreme Court of Pennsylvania can change the venue in civil cases on original jurisdiction.

17. As was pronounced by this Honorable Court in the case of *Apex Hosiery Company v. Philadelphia County, et al.*, 331 Pa. 177, 1938, "This Court has all the powers of the English Court of King's Bench by the Act of May 22, 1722, 1 Sm. L. 131, Section 13: The Act of June 16, 1836, P.L. 784, Section 1, enlarges these powers. See *Schmuck v. Hartman*, 222 Pa. 190. Article III, Section 23, of the Constitution does not take away from the Supreme Court any of its inherent powers, nor did the acts passed by the legislature pursuant to that section. See *Commonwealth v. Reilly*, 324 Pa. 558". This Court further said in *Summers v. Kramer*, 271 Pa. 189, at p. 198: "The Act of 1836 applies 'as well in criminal as in civil pleas or proceedings,' and the Court of King's Bench, to whose jurisdiction ours is assimilated under the Act of 1722, had 'cognizance of both civil and criminal causes': 3 Blackstone's Commentaries *42; Coke's Institutes of the Laws of England *71; 6 Bacon's New Abridgment of the Law 438. Under these statutes and decisions it is clear we have the right, without considering what the court below could or should have done, to direct this case to be heard by some judge against whom no question of prejudgment can be urged; . . ." See also *Wattson v. Chester & Delaware River R. R. Co.*, 83 Pa. 254, where Chief Justice Agnew at p. 256 indicated that the power to change the venue in civil cases was not disturbed by the Constitution and statutes passed thereunder. *Little v. Wyoming County*, 214 Pa. 596, at p. 599, refers only to the power

of the county courts and does not concern this Court. In *Crawford's Estate*, 307 Pa. 102, at p. 107, we said: "When the legislature has not acted on a cause which is of sufficient importance to require a change of venue, the right to such change is not lost, and the power is still lodged in the Supreme Court."

18. There is no question that this Honorable Court has the jurisdiction and power to change the venue of the said proceeding in the Orphans' Court of Allegheny County to the Orphans' Court of another county of the vicinage; and it is respectfully submitted that the Court should thus exercise its power. Otherwise, the deprivations of petitioner's property and individual liberties without due process of law will be perpetuated. The only alternative relief to be granted your petitioner is the assignment by this Honorable Court of an Orphans' Court Judge from another county of this Commonwealth to preside over the said proceedings in the Orphans' Court of Allegheny County, with a prompt hearing on the issue of the fraud and misconduct of your petitioner's adversaries.

19. The reasons for the relief sought herein by your petitioner are far more compelling than the usual and accepted reasons for change of venue. Customarily, changes of venue are ordered in cases where prejudice prevents a fair trial or an impartial hearing. In the instant case, incredible as it may seem, the urgent need for change of venue results from an astonishing, unheard of prejudice by reason of which the very hearing itself is unobtainable. The prejudice of the Orphans' Court of Allegheny County in the instant matter should shock the conscience of this Honorable Court into speedily granting the requested relief.

WHEREFORE, Cora Hubbard Williams, petitioner, respectfully prays that this Honorable Court will enter an Order changing the venue of the proceedings in the Orphans' Court of Allegheny County at No. 2750 of 1955, In Re: Estate of Cora Hubbard Williams, an alleged incompetent, to the Orphans' Court of another county of the vicinage; and, in the alternative, assigning an Orphans' Court Judge of another county of this Commonwealth to preside over the said proceeding in the Orphans' Court of Allegheny County, the purpose of the change of venue and alternative assignment of a Judge being the conduct of a prompt hearing on the issues of the fraud and misconduct of your petitioner's adversaries in obtaining the adjudication of incompetency entered in the Orphans' Court of Allegheny County on July 6, 1955.

Respectfully submitted,

Cora Hubbard Williams, Petitioner

Paul Ginsburg, Attorney for Petitioner
Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania
412-471-6060

Appendix.

AFFIDAVIT

Commonwealth of Pennsylvania }
County of Allegheny } ss.

Before me, a Notary Public in and for said County and State, personally appeared Cora Hubbard Williams who, being duly sworn according to law, deposes and says that the facts set forth in the foregoing Petition for Change of Venue are true and correct.

Cora Hubbard Williams.

Subscribed and sworn to before me this fourteenth day of March, 1963.

VIRGINIA FLEMING
Notary Public
Pittsburgh,
Allegheny Co., Pa.

My Commission Expires April 18, 1966.

ORDER OF COURT

"March 21, 1963

Petition Denied.

PER CURIAM"

Office Supreme Court, U.S.
FILED
JUL 15 1963
JOHN

IN THE

Supreme Court of the United States

October Term, 1963

No. 216

IN RE: ESTATE OF CORA HUBBARD WILLIAMS

RESPONDENTS' BRIEF SUR PETITION FOR WRIT OF CERTIORARI

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THE LEGAL INTELLIGENCER 10-5-37TH ST. PHILA.

INDEX

	Page
Counter-Statement of Questions Presented	1
Counter-Statement of the Case	2
Argument	7
1. Lis Pendens—Complaint in Federal District Court on Appeal to the Third Circuit.	7
2. No Litigation Pending in the Orphans' Court of Allegheny County	7
3. The Incompetent Petitioner Filed in June of 1962 a Petition in the Orphans' Court of Allegheny County Alleging that the Original Appointment of the Guardians Was a Denial of Due Process and Other Constitutional Rights of the Incompetent as Well as the Allegations that the Appointment Was Procured by Fraud	8
Conclusion	10

IN THE

Supreme Court of the United States

October Term, 1963

No. 216

IN RE: ESTATE OF CORA HUBBARD WILLIAMS

RESPONDENTS' BRIEF SUR PETITION FOR WRIT OF CERTIORARI

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. When constitutional questions are raised by a Petition for Writ of Certiorari in a collateral matter which is presently the subject of separate litigation in the Federal Courts between the same parties, is this not reason for denying the grant of the Writ?

2. When there is no litigation pending in a State Court and a Petition is presented to its highest Appellate Court for Change of Venue, are there any constitutional deprivations involved in the denial of a Change of Venue?

3. Where petitioner in the Writ of Certiorari alleges as reasons for the granting of said Writ denial of due process on two prior Petitions in the State Courts, one of which she withdrew with prejudice and the other never filed an appeal to this Court, is petitioner doing by indirection that which is barred by lapse of time?

COUNTER-STATEMENT OF THE CASE

The petitioner, Cora Hubbard Williams, is an incompetent having been so adjudicated by the Orphans' Court of Allegheny County, Pennsylvania, on July 7, 1955. At the time of her adjudication of incompetency, Cora Hubbard Williams was an inmate at the Trenton State Hospital for the Insane, Trenton, New Jersey, where she had been placed on the petition of the Chief of Police of Mantoloking, New Jersey, and by Order of the Court because of her drunkenness, her assaults on two women and her obvious mental deterioration. This commitment to the Trenton State Hospital for the Insane was on May 31, 1955.

Mrs. Williams had assets in excess of Four Million Dollars and on June 20, 1955, her daughter, Cora Williams Murdoch, on the advice of counsel and the doctors attending her mother, petitioned the Orphans' Court of Allegheny County, Pennsylvania, which was the domicile of the incompetent, to appoint a guardian of her mother's estate.

The Orphans' Court of Allegheny County issued a citation on the incompetent directing that she be served with a notice of the pending hearing. This notice was served by Harrison T. Barrow, Esquire, an attorney, who testified at the hearing before the Orphans' Court of Allegheny County, held on July 5, 1955, that he personally served the incompetent with the said notice of hearing.

In addition, two psychiatrists who had been treating Mrs. Williams testified as to her incompetency. One of these doctors, to wit, Dr. Spradley, was present when notice of the hearing and the citation were served upon her by Harrison T. Barrow, Esquire. Throughout the entire proceeding the Orphans' Court of Allegheny County, Pennsylvania, was scrupulous in following the provisions of the Incompetents' Estates Act of 1951 (50 Purdon's Statutes Sec. 1631).

The Orphans' Court of Allegheny County, Pennsylvania, thereupon filed an Order, dated July 7, 1955, adjudi-

cating Cora Hubbard Williams an incompetent and appointing The Mellon National Bank and Trust Company and Cora Maltz Williams, her daughter, now Cora Williams Murdoch, as the Co-Guardians of her estate. The Order decreed that the sole custody of all of the assets of the incompetent shall be and remain in the possession of The Mellon National Bank and Trust Company, Pittsburgh, Pennsylvania.

In September of 1955, The Mellon National Bank and Trust Company, due to a conflict of interest, resigned as Co-Guardian and the incompetent, Cora Hubbard Williams, (petitioner herein), signed a Consent and Joinder to the appointment of a substituted corporate Co-Guardian (Commonwealth Trust Company of Pittsburgh). This Consent has never been attacked by the incompetent who again received notice that a substituted corporate Co-Guardian of her estate was to be apppointed.

The incompetent petitioner, from the time of her release from the Trenton State Hospital for the Insane in 1955, has spent time in the following mental institutions: Pennsylvania Institute, Philadelphia, Pennsylvania, Medical College of Virginia Hospital, Richmond, Virginia, and the Menninger Clinic, Topeka, Kansas. All of these institutions, from 1955 to 1959, have agreed on one fact and that is that Cora Hubbard Williams is an incompetent suffering from an arterial sclerosis of the brain, acute alcoholism, manic depression and a chronic brain syndrome (brain damage).

The record clearly shows that, prior to the adjudication of incompetency, Mrs. Williams had become the victim of designing persons. Among other matters, Mrs. Williams was defrauded into the sale of her majority interest in Hubbard and Company, a Pennsylvania Corporation. Subsequent to the adjudication of incompetency, the Co-Guardians instituted suit in this matter and recovered, for the incompetent's estate, the sum of Three Hundred Twenty-five Thousand ($325,000.00) Dollars. In addition to the

above matter, the incompetent had, in the year immediately preceding her adjudication, spent almost One Million ($1,000,000.00) Dollars in acquiring non-income producing assets which included, inter alia, 21 houses in the New Jersey resort area, which real estate has been liquidated by the Co-Guardians at a substantially lower price than that paid by the incompetent. The incompetent also purchased several pieces of jewelry at highly inflated prices which the Co-Guardians have been unable to liquidate. All of these transactions were a result of the incompetent having been the victim of designing persons. This course of erratic conduct was terminated with the adjudication of incompetency and the appointment of Co-Guardians of her estate.

From 1955 to date the Co-Guardians have filed two separate accounts with the Orphans' Court of Allegheny County, Pennsylvania, which, after due notice, have been audited and approved by the said Court. In addition, a Guardian ad litem was appointed by the Orphans' Court of Allegheny County to protect the interests of the incompetent and a report of the Guardian ad litem, along with the second account, was approved by the said Court in September of 1958.

Since April of 1959, the incompetent has hired numerous reputable attorneys who have represented her for short periods of time. One attorney, in 1961, filed a Petition for the Adjudication of Competency. This Petition was withdrawn by the incompetent and her lawyers discharged after the incompetent had agreed to undergo psychiatric re-examination and then refused to do so.

Subsequent to the dismissal of her counsel, who had been President of the Allegheny County Bar Association, the incompetent secured the services of her present counsel who has placated the whims of the incompetent by harassing the Co-Guardians by instituting endless litigation in every State Court of the Commonwealth of Pennsylvania and the Federal Courts as hereinafter set forth. With the entry of each new suit, the incompetent's desire for publi-

city is satiated by her counsel securing newspaper coverage, attacking her family, the Corporate Co-Guardian and the judges and lawyers connected with the case.

On June 19, 1962, the incompetent's present counsel filed a Petition in the Orphans' Court of Allegheny County alleging that the original appointment was procured by fraud and without due process of law. This Petition was dismissed, on June 29, 1962, on its merits and for the further reason that it was supported by an affidavit which was removed from another Petition by the incompetent's counsel and attached to the Petition which the said counsel admitted was neither seen nor read by the incompetent but which he submitted to the Orphans' Court for adjudication.

Thereafter on July 5, 1962, the incompetent filed Exceptions to the Opinion and Decree of the Orphans' Court of Allegheny County dated June 29, 1962, which had dismissed her Petition. On October 25, 1962, the incompetent, by her present counsel, withdrew WITH PREJUDICE, the said Exceptions to the Adjudication to which she now complains.

The incompetent then filed in the Supreme Court of Pennsylvania a Petition to declare the original appointment void on the grounds of fraud and lack of due process. This Petition was dismissed on August 29, 1962. A subsequent motion for Reconsideration was also dismissed by the Supreme Court of Pennsylvania on October 4, 1962. The petitioner incompetent has never filed any appeals or Petitions for Writs of Certiorari to the Decrees of the Supreme Court of Pennsylvania or of the Orphans' Court of Allegheny County, Pennsylvania.

Thereafter on October 19, 1962, the incompetent filed a Complaint in the United States District Court for the Western District of Pennsylvania at Civil Action No. 62-838, alleging all of the same facts that she had previously alleged in the Orphans' Court of Allegheny County, Pennsylvania, and in the Petition to the Supreme Court of Pennsylvania including a denial of due process and other constitutional

rights. This Complaint was dismissed and is presently pending before the Circuit Court of Appeals for the Third Circuit.

The incompetent, through her present counsel, thereafter, again attempted to collaterally attack the adjudication of incompetency through a suit filed in the Court of Common Pleas of Allegheny County, Pennsylvania. This suit was also dismissed.

The incompetent's present counsel has also, in his own name, instituted three (3) suits in the County Court of Allegheny County, Pennsylvania, against the Co-Guardians of Mrs. Williams' Estate for contracts entered into by counsel purportedly on behalf of Mrs. Williams which the Co-Guardians refused to honor. This was another attempt by counsel to collaterally attack the guardianship.

The incompetent petitioner then filed a Petition in the Supreme Court of Pennsylvania for Change of Venue notwithstanding the fact there was no action pending in the Orphans' Court of Allegheny County. The respondent Co-Guardians filed an Answer to the said Petition. The Petition for Change of Venue was dismissed and the incompetent filed a Motion to Strike Off the Answer of the Co-Guardians as well as a Petition for Reargument. The Court denied the Motion to Strike Off the Answer of the Co-Guardians and the Petition for Reargument and permitted its Order of March 21 1963, dismissing the Petition for Change of Venue, to stand. The incompetent then filed this Petition for Writ of Certiorari complaining not only about the action of the Supreme Court of Pennsylvania in denying her Change of Venue Petition but also all of the collateral matters alleged and adjudicated in the prior actions which counsel had filed and failed or refused to appeal to this Court.

At no time has the incompetent, through her present counsel, attempted to follow the provisions of the Incompetents' Estates Act of 1951 by filing a Petition for Adjudica-

tion of Competency, although her counsel has never questioned the constitutionality of this Act. This is uncomprehendable in view of the fact that the Orphans' Court of Allegheny County, Pennsylvania, has stated, in the Opinion of the President Judge, that it will entertain at anytime a Petition to have Mrs. Williams adjudicated competent.

[All the foregoing facts were pleaded either in the Answer to Petition for Change of Venue or in the Motion to Quash filed by the respondents in the Court below and not printed or certified by the Petitioner herein, but certified by the Supreme Court of Pennsylvania to this Court.]

ARGUMENT

1. LIS PENDENS—COMPLAINT IN FEDERAL DISTRICT COURT ON APPEAL TO THE THIRD CIRCUIT.

The petitioner incompetent has filed in the Federal District Court for the Western District a suit alleging a denial of due process in the appointment of a guardianship of her estate, that the initial appointment was procured by fraud, that the Orphans' Court of Allegheny County was biased and prejudiced against her cause and that the Supreme Court of Pennsylvania is also biased and prejudiced against her cause. The defendants in this action are the Co-Guardians of the estate of the incompetent. She seeks by this suit to set aside the original appointment, to surcharge the Co-Guardians for monies which they have spent pursuant to Court order and an accounting from said Co-Guardians plus damages. This action was dismissed by the Federal District Court for the Western District in an Opinion by Judge Sorg on February 14, 1963, (Civil Action No. 62-533). The incompetent appealed said Order to the Circuit Court of Appeals for the Third Circuit which appeal is now pending.

All of the constitutional issues raised by the incompetent petitioner in the present Petition for Writ of Certiorari are involved in and have been adjudicated in this Federal Action now pending. This present Petition for Writ of Certiorari applies to a Petition for Change of Venue filed in the Supreme Court of Pennsylvania. Respondents filed an Answer denying all of the allegations set forth in said Petition which incompetent's counsel refused to print on appeal plus a Motion to Quash which also was not printed. Both of these documents as well as the entire record have been certified to this Honorable Court. One of the reasons stated in the Motion to Quash as well as the Answer was this pending litigation concerning the constitutional questions raised by petitioner. It is the belief and opinion of the Co-Guardians that justice cannot be served by a review of the constitutional question on a denial of a Change of Venue when the very same issues are now being litigated in the Federal Courts. It is interesting to note that counsel on his argument in the Federal District Court specifically stated that he was not attacking the constitutionality of the Incompetents' Estates Act of 1951 (50 Purdon's Statutes 1631[a] which provides, inter alia, the type of notice that alleged incompetents are to receive.

2. No Litigation Pending in the Orphans' Court of Allegheny County.

The incompetent in the instant case filed a Petition with the Supreme Court of Pennsylvania asking for a Change of Venue and alleging facts that were denied by the Co-Guardians. At the time she presented this Petition there was no litigation then being considered by the Orphans' Court of Allegheny County nor were there any Petitions filed by the incompetent then pending or now pending before said Court. It is submitted, therefore, that the Supreme Court of Pennsylvania acting on the Answer and the Motion to Quash filed by the Co-Guardians did not find

sufficient reasons to grant the Change of Venue for the obvious reason that there was nothing before the Orphans' Court of Allegheny County to Change the Venue.

The incompetent's counsel withdrew *with prejudice* all of his Exceptions to the Order of the Orphans' Court of Allegheny County dated June 29, 1962, which contained all of the constitutional questions which he now complains again. This was the only and last Petition filed by the present incompetent's counsel in the Orphans' Court of Allegheny County.

3. THE INCOMPETENT PETITIONER FILED IN JUNE OF 1962 A PETITION IN THE ORPHANS' COURT OF ALLEGHENY COUNTY ALLEGING THAT THE ORIGINAL APPOINTMENT OF THE GUARDIANS WAS A DENIAL OF DUE PROCESS AND OTHER CONSTITUTIONAL RIGHTS OF THE INCOMPETENT AS WELL AS THE ALLEGATIONS THAT THE APPOINTMENT WAS PROCURED BY FRAUD.

This Petition was served upon the Co-Guardians as Respondents. The prayer of the Petition sought a surcharge and an accounting by the Co-Guardians and the vacating of the original Order of Incompetency. On June 29, 1962, the Court dismissed the Petition on its merits. The incompetent immediately filed Exceptions to said Decree of the Orphans' Court and then for some unexplained reason present counsel withdrew said Exceptions *With Prejudice* on October 25, 1962. In this Petition she raised all of the constitutional questions she now seeks to have reviewed.

Thereafter the incompetent, by her present counsel, filed in the Supreme Court of Pennsylvania an original Petition alleging the identical facts set forth in its Petition presented to the Orphans' Court of Allegheny County in June of 1962 which complained of the same constitutional deprivations and added the bias and prejudice of the judges of the Orphans' Court of Allegheny County. This Petition was served on the respondents, as the incompetent was seek-

ing the same relief, to wit, the surcharging of the Co-Guardians and the filing of an account. The Co-Guardians filed a Motion to Quash which Motion was granted and the Petition was dismissed on August 29, 1962. The incompetent and her present counsel never filed any direct appeals to the Supreme Court of the United States or petitioned for Writ of Certiorari. It is obvious, therefore, that the present Petition for Writ of Certiorari has assigned as reasons for the allowance of the Writ the denial of these same previous two Petitions which never had been appealed to this Court.

It is the belief of the Co-Guardians that in the present Petition for Change of Venue, which is the subject of this Petition for Writ of Certiorari, there are no federal questions of substance involved and it is obvious from a reading of the Answer filed by the Co-Guardians that the constitutional rights of the incompetent had been scrupulously followed throughout all of the proceedings. What incompetent's counsel is attempting to do indirectly, by this Writ, is to secure a review by this Court of two Petitions that he failed to appeal and in fact withdrew all of his Exceptions *with prejudice.*

CONCLUSION

The Co-Guardians of the estate are arms of the Orphans' Court of Allegheny County and as such are subject to its jurisdiction and Orders. The Co-Guardians have been made defendants or respondents in six suits seeking surcharges against them and in which there have been allegations of wrongdoings, fraud, conspiracy and other invectives invented by counsel. It is the duty of the Co-Guardians to prevent incompetent's estate from being depleted by designing persons. It is quite clear that attorneys are just as capable of being designing persons as other laymen. It is the belief of the Co-Guardians that the cause of justice will be served by the orderly process of the appeal

now pending in the Federal Courts concerning the same issues raised by this Writ. It is respectfully submitted that the instant Petition for Writ of Certiorari be dismissed.

Respectfully submitted.

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Office-Supreme Court, U.S.
FILED
JUL 25 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 216

IN RE: ESTATE OF
CORA HUBBARD WILLIAMS

PETITIONER'S REPLY BRIEF

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 216

IN RE: ESTATE OF
CORA HUBBARD WILLIAMS

PETITIONER'S REPLY BRIEF

The petitioner has been served with a document entitled "Respondents' Brief Sur Petition For Writ Of Certiorari", which presumably was intended to be a brief in opposition to the petitioner's Petition for Writ of Certiorari under paragraph 1 of Rule 24.

Aside from the incorrectness and nonconformity of the legend on the respondents' Brief with the usual and accepted practice in this Honorable Court, it is obvious from its County Court type contents—Counter-Statement of Qusetions Presented, Counter-Statement of the Case, Argument—that their Brief would be employed to have the effect of confusing the actual and clear issues presented to this Honorable Court in the Petition.

It is evident from the Petition that the only relief sought from this Honorable Court is the protection and enforcement of petitioner's right to be heard in advance of judgment as guaranteed by the Constitution and laws of the United States, and particularly by the Due Process Clause of the Fourteenth Amendment.

Even if the respondents had complied with the accepted practice in this Honorable Court through a brief in opposition, they could not have complied with the provisions of paragraph 1 of Rule 24 for their failure to disclose "any matter or ground why the cause should not be reviewed by this Court".

Aside from the fact that the respondents' Brief is wholly without merit and without any legal opposition whatever, it is surprisingly precisely what they have called it. In other words, the Respondents' Brief Sur Petition For Writ Of Certiorari actually is a Brief in support of the Petition. Throughout their Brief they have repeatedly asserted that your petitioner raised all of the constitutional questions complained of herein, including the denials of Due Process of Law, in all of the State and Federal Court proceedings heretofore had, and they thus have supported your petitioner's right to a review in this Honorable Court.

So far as the respondents' Counter-Statement of Questions Presented is concerned, said questions are patently insupportable and untenable, manifesting a complete misapprehension of the considerations governing review on certiorari as set forth in paragraph 1 (a) of Rule 19. Respondents are not permitted to make such a Counter-Statement of Questions Presented, and the petitioner need not and will not make a specific reply thereto. Petitioner's reply, however, to the improper Counter-Statement of the Case and the improper Argument will embrace such a reply. The Counter-Statement of the Case and the Argument are so loaded with incorrect statements, inaccuracies, erroneous conclusions

of fact and of law, impertinencies and other improper insertions, that your petitioner is impelled to reply to most of them.

In the opening sentence of their Counter-Statement of the Case (p. 2), counsel for the respondents have stated "The petitioner, Cora Hubbard Williams, is an incompetent . . .", and have repeatedly referred to her as such throughout the Brief. It is admitted that a fraudulent adjudication of incompetency was made and entered against your petitioner on July 6, 1955, in an *ex parte* hearing wherein she was denied her rights to notice and to be heard in advance of judgment, as well as the right to counsel and opposing witnesses, at which "hearing" not even a guardian *ad litem* was appointed to protect her property rights and individual liberties. On the contrary, however, it is submitted that petitioner is not an incompetent, and the respondents and their attorneys know this. They nevertheless persist in making this mean asseveration at every opportunity, as they did herein. They repeat it in briefs and pleadings, apparently hoping that repeatedly stating it will make it so. In order to add to petitioner's embarrassment, they even have unnecessarily volunteered this defamatory matter to merchants and establishments where she has charge accounts, in connection with their unlawful interferences with petitioner's right of privacy and right to make whatever normal and customary purchases she chooses. They have continually investigated her charge accounts as though they are also guardians of her person instead of only guardians of her Estate.

The knowledge of the respondents and their attorneys that petitioner is not an incompetent, as hereinafter explained, resulted not only from their observations

of her, not requiring medical education or training, but also from their information received from medical experts in psychiatry and neurology. Such information was received by them in connection with Mrs. Williams' Petition for Adjudication of Competency which was about to be heard two years ago, but which was properly discarded when notified by her adversaries that she would have to undergo a re-examination by them which could unlawfully and unconstitutionally trap her into another adverse decision. Thus the concluding paragraph of respondents' Counter-Statement of the Case (pp. 6-7) is a mere sham and is as follows: "At no time has the incompetent, through her present counsel, attempted to follow the provisions of the Incompetents' Estates Act of 1951 by filing a Petition for Adjudication of Competency, although her counsel has never questioned the constitutionality of this Act. This is uncomprehendable in view of the fact that the Orphans' Court of Allegheny County, Pennsylvania, has stated, in the Opinion of the President Judge, that it will entertain at anytime a Petition to have Mrs. Williams adjudicated competent". It does not really mean what it says. Petitioner knows from her prior experience in that Court that it will "entertain" such a petition only on its own detrimental terms and conditions. If petitioner's former counsel was unable to proceed for her with due process of law on such a petition, why would her present counsel attempt to do so? Furthermore, by what authority or right do the adversary attorneys and Court presume to advise petitioner how to proceed when she has already exercised her legal and constitutional election to proceed on the issue of fraud in the procurement of the adjudication of incompetency?

There are many sound legal and equitable bases for your petitioner's proceeding in line with the advice of her own counsel, although "this is uncomprehendable" (p. 7) to counsel for her adversaries. Your petitioner, however, is advised that she need not reply thereto, in view of the innumerable other erroneous conclusions of fact and of law contained in respondents' Brief, which would make such "uncomprehendable" things come as no surprise to a competent. Accordingly, the insupportable and untenable position thus expressed by the respondents, is not incomprehensible to your petitioner.

When the respondents averred (p. 4) that "Since April of 1959, the incompetent has hired numerous reputable attorneys who have represented her for short periods of time", they grossly misrepresented and exaggerated the situation. They know that she could not and has not hired any attorneys, because the respondents have wrongfully seen to it that she is without funds to do so. It is true that Mrs. Williams has consulted with a few reputable attorneys (some with conflicting interests), but the only two of them who have actually represented her are the former counsel who tried in vain to proceed with the Petition for Adjudication of Competency without the above mentioned prejudicial interference, and her present counsel. *Incidentally, when the respondents averred (p. 4) that, "Subsequent to the dismissal of her counsel, who had been President of the Allegheny County Bar Association, the incompetent secured the services of her present counsel . . .", they could have added that her present counsel also had previously been twice elected an Officer of that same Bar Association.*

The knowledge of the respondents and their counsel of expert medical testimony referred to above was contained in letters which were appended as Exhibits to said Petition for Adjudication of Competency and which would have been confirmed at the proposed hearing by the medical experts themselves. The contents of those Exhibits made it quite clear that your petitioner was legally and mentally competent and would not become the victim of designing persons, nor require any guardian of her Estate.

The Exhibits included letters from J. B. Spradley, M. D., 383 West State Street, Trenton 8, New Jersey, "practice limited to neurology and psychiatry", dated November 15, 1960; Robert J. Hudson, M. D., Neuropsychiatrist, 121 University Place, Pittsburgh 13, Pennsylvania, dated July 21, 1961; Raymond L. Rau, M. D., 600 Medical Center Building, 3515 Fifth Avenue, Pittsburgh 13, Pennsylvania, dated July 25, 1961; Murray Lonstein, Ph. D., Clinical Psychologist, 1210 Leslie Road, Green Hill Manor, Pitcairn, Pennsylvania, dated January 2, 1961; and **Robert A. Matthews, M.D., Professor of Psychiatry and Head of the Department of The Jefferson Medical College of Philadelphia, 1025 Walnut Street, Philadelphia, Pennsylvania, dated May 8, 1961. The said Dr. Matthews opened his letter by stating: "As a member of the staff of the Institute of the Pennsylvania Hospital, I was asked to study the case and make an examination of your client, Mrs. Cora Hubbard Williams, for the purpose of evaluating her present mental condition and competency", and concluded it by stating, "In my opnion Mrs. Williams can now be considered as legally competent. The three other psychiatrists, Dr. Spradley, Dr. Hudson and Dr. Rau, who have**

examined the patient in recent months have informed me that they are of the same opinion".

About six months ago the co-guardians testified that the annual income from petitioner's multi-million dollar Estate is substantially in excess of $150,000.00, about half of which income is tax free. They nonetheless disburse to your petitioner a mere $500.00 per month and honor only such charges by her as suit their whim and caprice, deliberately and illegally preventing her from living in accordance with her station in life, the total of such disbursements approximating about ten per cent of her income. These restrictive disbursements to and for the accounts of your petitioner are violative of the provisions of the Incompetents' Estates Act, providing that "all income" can be disbursed to the incompetent without Order of Court.

The petitioner, of course, cannot succeed in opening and vacating the fraudulent adjudication of incompetency if no Court in the United States of America will afford petitioner her right to a hearing thereon. It is respectfully submitted, however, that this Honorable Court will be the first to afford petitioner the protection and enforcement of her right to such a hearing. After hearing, petitioner believes that the adjudication of incompetency will be set aside and vacated. Until such time, her co-guardians have the "legal" authority to protect the principal of her Estate from designing persons; but they have no right whatever thus to "protect" her income. Contrarily, while the co-guardians

impose undue financial restrictions upon petitioner, as aforesaid, they themselves and their attorneys have repeatedly raided her Estate for hundreds of thousands of dollars for excessive and exorbitant commissions and fees, in addition to the disbursements of illegal gifts in excess of $160,000.00 made to petitioner's co-guardian daughter.

A glaring example of the excessive and exorbitant fees and commissions mulcted from petitioner's Estate is recorded in connection with the settlement of the ill founded suit brought by the co-guardians over the sale of Hubbard & Company (p. 3), the circumstances of which have been grossly misrepresented to this Honorable Court by counsel. The respondents have averred (p. 3): "The record clearly shows that, prior to the adjudication of incompetency, Mrs. Williams had become the victim of designing persons. Among other matters, Mrs. Williams was defrauded into the sale of her majority interest in Hubbard and Company, a Pennsylvania Corporation. Subsequent to the adjudication of incompetency, the Co-Guardians instituted suit in this matter and recovered, for the incompetent's estate, the sum of Three Hundred Twenty-five Thousand ($325,000.00) Dollars."

Before going into the said situation concerning exorbitant fees, petitioner denies the Record shows that she had ever become the victim of designing persons prior to the fraudulent adjudication of incompetency; and on the contrary submits that she had become the victim of designing persons only after the said adjudication when she was unable to protect herself and was victimized against her will by the co-guardians of her

Estate and their attorneys (excepting, of course, the Mellon National Bank and Trust Company and their attorneys, who were deceived into appearing at the outset but immediately withdrew after learning of the co-guardian daughter's previously undisclosed plans). *It is absurd to claim that petitioner was defrauded and victimized in connection with the sale of Hubbard & Company, when the Record clearly shows that she exercised prudent and sound judgment in selling her interest therein, and received a fair and adequate price.* Mrs. Williams testified that she was motivated to sell by a drop in annual earnings from over one million dollars to approximately one-half million dollars; the fact that the machinery and equipment, depreciated over a period of more than twenty years, had become so worn out and obsolete that Hubbard & Company became unable to compete and several millions of dollars would be required to restore the company to the profitable position which it formerly enjoyed; and that she could not afford to finance such a program and would not risk borrowing the money to stay in business, stating that she preferred realism to sentiment. *What better reasons could an experienced businessman give for selling out? So far as the selling price is concerned, which exceeded four and one-half million dollars, her own judgment that the price was fair and adequate, was confirmed by The First Boston Corporation, as well as by Mr. Charles A. McClintock, then President of the Colonial Trust Company of Pittsburgh, and a trusted friend and adviser of her late father and herself.*

The above mentioned assertion by the respondents that they "instituted suit in this matter and recovered, for the incompetent's estate, the sum of Three Hundred

Twenty-five Thousand ($325,000.00) Dollars" is another misrepresentation, because that amount was neither a recovery nor a real asset for the alleged incompetent's Estate. Through the said misrepresentation the respondents have wilfully tried to create the mistaken impression that the suit which they instituted was meritorious and that they won it, *when as a matter of fact, they testified that they could not possibly win it for lack of evidence.* In view of all the facts and circumstances surrounding that suit, it is submitted that the compromise of $325,000.00 was the type of settlement usually referred to as a "shakedown". *Although $325,000.00 is a lot of money, it constituted a very small percentage of the wealth of the multi-millionaire defendants in that suit, who preferred to pay that amount rather than be bothered, annoyed and harassed any further by the co-guardians and their attorneys.* Incidentally, prior to the adjudication your petitioner had made it plain that she would not institute such an ill founded, shameful suit, thus giving her designing, unbalanced daughter this additional motive for framing the fraudulent incompetency adjudication so that the said Cora Williams Murdoch could then get into position to give vent to her hatred and envy of the other members of the family through suing them on such anti-social, trumped up charges.

Your petitioner denied that the said "recovery" was made for her Estate because her Estate was not really the beneficiary of it. The real beneficiaries were the co-guardians, their attorneys, the Internal Revenue Service, and numerous "experts" who had testified at hearings to determine whether or not the suit should be brought. At the hearing on allowance of fees, the

co-guardians testified that although they had represented to the Court that the recovery would be tax free damages, they were afterward advised that it must be treated as a long-term capital gain, with the result that twenty-five per cent of the recovery must be paid to the Internal Revenue Service after deductions of $107,500.00 for counsel fees, *et cetera*. *It is respectfully submitted that after the numerous substantial deductions, there was hardly any benefit therefrom to the Estate.* Although the co-guardian and attorneys testified, and President Judge Hugh C. Boyle of the Orphans' Court stated, that they were all aware of the Pennsylvania law to the effect that fees from incompetents' Estates must be on the most modest and moderate scale, nevertheless the attorneys' fees for this one matter were sought in the amount of $112,500.00 and approved in the amount of $107,500.00. This was done in the face of cogent evidence that the suit should never have been brought. Incidentally, it was argued by counsel for your petitioner that as soon as the suit was commenced, the defendants promptly offered about one-half the amount of that recovery to these designing litigants as a "nuisance value" settlement. No legal talent is required in procuring nuisance value settlements against such defendants. It is further submitted, in view of the attorneys' fees in the amount of $107,500.00 for making that compromise, on top of tremendous prior disbursements over the years for attorneys' fees, that petitioner Cora Hubbard Williams readily agrees with the statement of her adversaries in their Conclusion (p. 10), "It is quite clear that attorneys are just as capable of being designing persons as other laymen".

While on the subject of the designing attorneys in this proceeding, petitioner makes the interesting observation that the Philadelphia law firm of Schnader, Harrison, Segal & Lewis filed an Affidavit of Service of a Petition on July 16, 1955, made upon petitioner's daughter, then Cora Maltz Williams of Philadelphia. It is evident therefrom that said law firm of which Frank Murdoch, Esquire, is and then was an associate, knew of this multi-million dollar Estate since its inception, as well as ancillary proceedings in New Jersey. The following year Mr. Britton Murdoch, son of Frank Murdoch, Esquire, married your petitioner's daughter; promptly after which all of the Murdochs moved from a modest apartment in the village of Overbrook to luxurious homes in swank Haverford.

In reply to respondents' reference (p. 2) to petitioner's incarceration at Trenton, New Jersey; *it is submitted that the public tax supported Trenton State Hospital for the Insane is no place for a multi-millionaire.* This should have been particularly obvious to the Chief of Police of Mantoloking, New Jersey, where petitioner's summer home was located. Although the respondents claim that the confinement was accomplished through the Petition of the Chief of Police, petitioner can establish that his Petition actually was made pursuant to the plan and at the instigation of petitioner's daughter. The daughter's assertion (p. 2), that she petitioned for appointment of guardians "on the advice of counsel and the doctors attending her mother", is entirely untrue. Contrarily, it was her counsel and doctors who unwittingly combined with the daughter to accomplish the adjudication, pursuant to her nefarious scheme.

In this connection, the Court should consider the fact that petitioner's daughter (who had been given all advantages by her mother) saw to it that her mother was brutally incarcerated, first in said public institution, where she never visited her mother; then had her continuously restrained and confined under unnecessary and excessive drugs and sedation for about four years; then opposed and frustrated every application and suit by her mother for obtaining legal and equitable relief (while at the same time pretending to be acting in the best interests of her mother as required by law), well knowing of her mother's undue humiliating distress, and the lack of funds with which to maintain her station in life. *What sort of diagnosis would independent psychiatrists make of petitioner's daughter?* Is such a person normal and sane? Would the daughter pass the same tests of legal competency which her mother did two years ago, according to the above mentioned diagnoses of prominent psychiatrists? Has not the misbehavior of petitioner's wayward daughter given support to the old saying, that those who make charges of mental incapacity against others are usually the ones who themselves lack mental capacity?

Even if petitioner's daughter sincerely believed that her mother should have been confined and restrained for four years instead of one month as advised, would not your petitioner deserve better treatment and care than she received? Should not petitioner's daughter at least have allowed her mother to use and enjoy all the net income from her own Estate? Have not the adversary actions and activities of petitioner's daughter exhibited the worst sort of hatred and bitterness? *Is not peti-*

tioner's daughter the one who is under the sickening influence of designing persons?

Again the respondents have made a gross misrepresentation to this Honorable Court, and one need only read it to know that it is untrue. They have represented (p. 4) that your petitioner in the year immediately preceding the fraudulent adjudication "spent almost One Million ($1,000,000.00) Dollars in acquiring non-income producing assets which included, inter alia, 21 houses in the New Jersey resort area, which real estate has been liquidated by the Co-Guardians at a substantially lower price than that paid by the incompetent". In the first place, those twenty-one houses in the New Jersey resort area would obviously be good income producing properties; and in the second place, the cost of those properties was slightly in excess of only one-half million dollars.

The said statement by the respondents (p. 4) that they liquidated the twenty-one houses in the New Jersey resort area "at a substantially lower price than that paid by the incompetent" discloses part of the daughter's original scheme. All of those properties were purchased by your petitioner at the then prevailing market price or less; but the timing of those purchases afforded the daughter respondent a maneuver by which she could liquidate the properties at sacrifice prices to help establish the fraudulent adjudication and at the same time "take care of" some of those who were acting in combination and concert with her. Sacrificing those properties displayed poor judgment, because currently they have a value of about twenty-five per cent over and above the

prices which your petitioner paid for them. To refer to those houses as "non-income producing assets" is absurd beyond belief, unless untenably claiming that they were purchased to remain empty. Anyone familiar with that area is quite aware of the extremely high rentals paid, particularly in season and even all year round. *A reliable and independent appraiser of those assets would estimate a high yield on the capital invested.*

So far as the maneuver thus made available to petitioner's daughter is concerned, the acquisition and disposition of one of those properties manifests an interesting situation. Your petitioner acquired one of those properties at the request of Harrison T. Barrow, Esquire, who wanted to lease the first floor for his law office. Petitioner, however, would not claim that Attorney Barrow was a designing person for inducing her to make that purchase because he was willing to pay a fair rental. What transpired in the liquidation of that property (with the others) shows how petitioner's daughter acquired witnesses. When that property was "liquidated by the Co-Guardians at a substantially lower price than that paid by the incompetent", it was then purchased by the same "Harrison T. Barrow, Esquire, an attorney, who testified at the hearing before the Orphans' Court of Allegheny County, held on July 6, 1955, that he personally served the incompetent with the said notice of hearing" (p. 2). Mrs. Williams has repeatedly denied that she was ever served with a notice of hearing, and expects to be able to prove that.

It is incredible that these incompetent respondents would presume to aver (p. 4) that the jewelry purchased by your petitioner was at highly inflated prices and that

petitioner had thus become the victim of designing persons, when they know that the purchases were made from Harry Winston of New York City. Mr. Winston is perhaps the most prominent and reputable jeweler, catering to the wealthy; is far too busy and successful to victimize his customers; and certainly could not afford to do so at the risk of his great reputation. As a matter of fact, the jewelry which your petitioner purchased directly from Mr. Winston himself, although expensive, was the sort of jewelry one would expect a woman of your petitioner's wealth to possess and the prices thereof were not at all inflated.

The respondents' references to the litigation against them in the local Courts simply supports the petitioner's contention that they have been wrongfully interfering with all of her attempts to secure a hearing and to make direct and collateral attacks upon the fraudulent adjudication. Their charge, however, that "the incompetent's desire for publicity is satiated by her counsel securing newspaper coverage" (pp. 4-5) is quite as puerile as it is incorrect. The respondents and their counsel well know that this litigation has been highly publicized ever since its inception over eight years ago. It is common knowledge that any such litigation involving people of prominence and wealth, as well as newsworthy issues, always receives extensive "newspaper coverage". Respondents' invidious implications based upon such impertinent matter is indeed in poor taste and, in view of the fact that present counsel for petitioner entered his appearance a little more than one year ago, has no factual basis whatever.

The respondents' reference to the presentation and disposition of Mrs. Williams' Petition in the Orphans' Court (p. 5) is misleading, untrue and scandalous. *That Petition was not disposed of "on its merits" and could not have been, because the Court dismissed it without the required answer thereto and in advance of a hearing thereon.* Furthermore, the affidavit of Mrs. Williams appended thereto was properly and legally verified and reverified; and also the said verfication at any rate was mere surplusage.

The Exceptions to said Orphans' Court Decree were withdrawn with prejudice after it became clear that your petitioner could not under any circumstances obtain a hearing in that Court on the issue of the fraud and misconduct of her adversaries. Under such circumstances, going through the routine of Exceptions would merely be wasted motion. There is no legal significance to petitioner's voluntary withdrawal with prejudice, but judging by the respondents' repeatedly emphasizing this pointless point, they must feel that this Honorable Court will not be convinced.

In referring to the Petition which was dismissed by the Supreme Court of Pennsylvania on August 29, 1962 (p. 5), the respondents did not presume again to misrepresent that it was dismissed on the merits, when it was not. When they, however, asserted that your petitioner "has never filed any appeals or Petitions for Writs of Certiorari to the Decrees of the Supreme Court of Pennsylvania or of the Orphans' Court of Allegheny County, Pennsylvania", *they have overlooked or misapprehended the point that such petitions for writ of*

certiorari are not allotcable to the Orphans' Court and were not required to the Supreme Court of Pennsylvania prior to the instant one; and their intimation that such certiorari is a prerequisite to petitioner's suit in the District Court (p. 5) shows the incorrectness of their position on the doctrine of exhaustion of State remedies.

In their reference to counsel's "three (3) suits in the County Court of Allegheny County Pennsylvania, against the Co-Guardians of Mrs. Williams' Estate", counsel for your petitioner is quite astonished that the respondents' attorneys would misrepresent that these suits were "for contracts entered into by counsel purportedly on behalf of Mrs. Williams which the Co-Guardians refused to honor. This was another attempt by counsel to collaterally attack the guardianship". It is plain from the Complaints filed in those suits that they are based upon the doctrine of detrimental reliance. The co-guardians had falsely represented to petitioner's counsel that they would pay all of her bills, at the same time making it plain that they would not pay her counsel fees (although obligated under the law to do so). Accordingly and in reliance thereon, counsel guaranteed Mrs. Williams' account with a secretarial service which makes reasonable charges for preparation and typing of the various pleadings and briefs, *et cetera*, which are necessary in connection with seeking the protection and enforcement of her legal and equitable rights. When the co-guardians refused to honor these necessary and legal charges in violation of their aforesaid representations, counsel had no legal alternative but to bring suit. Each time that the charges guaranteed by counsel approxi-

mated $500.00, he would pay them pursuant to his guarantee and then bring suit against the co-guardian Commonwealth Bank and Trust Company, each time meeting vigorous opposition through untenable Preliminary Objections. The total amount currently sued for approximates $1,400.00; and it soon will be augmented in a required fourth suit. One would think that the respondents should prefer to conceal rather than disclose such litigation, which makes it evident that their promises cannot be relied upon even in such picayune respects. Their conclusion, however, that "This was another attempt by counsel to collaterally attack the guardianship" (p. 6) manifests the poor judgment which they exercise in jumping to conclusions.

The judgment sought to be reviewed herein is the Order of the Supreme Court of Pennsylvania dated March 21, 1963, denying the Petition for Change of Venue filed on March 14, 1963. Although the respondents had been served with Notice (App. 1) that the Petition for Change of Venue would be presented on March 19, 1963, and that their answer thereto, if any, should be filed prior to the said presentation according to the accepted practice in that Court, *no answer was timely filed by them*. Instead, on March 15, 1963, the respondents filed a Motion to Quash which was subsequently denied upon consideration of petitioner's Answer to the Motion to Quash filed on March 18, 1963. For failure of the respondents to appear on March 19, 1963, the Supreme Court of Pennsylvania permitted counsel for petitioner to proceed with oral argument; and nevertheless denied said Petition on March 21, 1963. It was not until April 2, 1963, that the

respondents for some inexplicable reason filed their supposed answer to the Petition, as is evident from the Affidavit appended thereto dated April 2, 1963. It is respectfully submitted that such an untimely answer in violation of the usual and accepted practice, and which could not possibly serve any useful legal purpose, should not have been received for filing; and certainly should not have been certified by the Prothonotary of the Supreme Court of Pennsylvania for filing in this Court. It is this "Answer" which the respondents have referred to in their discussion (p. 6) of the Petition for Change of Venue, as though it were properly filed and timely, with the false impression that the dismissal by the Pennsylvania Supreme Court was based upon consideration of the Petition and Answer. Because the immaterial, irrelevant, false and scandalous matters contained in said answer were not considered by the Supreme Court of Pennsylvania, they are not entitled to consideration by this Honorable Court. That is why your petitioner properly submitted for filing herein a certified copy only of the Petition for Change of Venue and the Order entered thereon. Under all the foregoing circumstances, a motion to strike the improperly certified "answer" from the Record in this Honorable Court should be granted; but your petitioner will not unduly burden this Honorable Court with such a motion. *Petitioner does, however, respectfully submit that upon being apprised of the foregoing circumstances and facts, this Honorable Court will treat that document as though it were stricken by refusing to examine it and give any consideration whatever to its contents.*

The Fantastic Arguments of Respondents Can Be Disposed of Readily.

1. The Doctrine of Lis Pendens Cannot Legally Be Invoked.

The respondents' attempt to invoke the doctrine of *lis pendens* cannot possibly receive favorable consideration because (a) the instant proceeding is necessarily, but not actually, a friendly proceeding pursuant to a State Statute, while the Federal Court proceeding is definitely adversary; (b) there is no identity of parties in the two proceedings, because there are no parties to the instant proceeding; (c) without replying to the respondents' incorrect description of the Federal Court proceeding (and their misstatement of the matter on Appeal), suffice it to say that it was brought pursuant to Section 1331 of the Judicial Code and thus the identity of the thing sued for is necessarily different from the object of the instant proceeding; and (d) the basic and underlying issue in the instant proceeding could not possibly be raised in the Federal Court, which has no jurisdiction over proceedings pursuant to the Pennsylvania Incompetents' Estates Act. Furthermore, it is inconceivable that the doctrine of *lis pendens* would be invoked in a State Court proceeding by reason of litigation pending in a Federal Court.

2. The Instant Proceeding Is Always Pending in the Orphans' Court Until Terminated.

The respondents' Argument that there is no litigation pending in the Orphans' Court is unsupported and insupportable. Their impertinent opening of that Argument (p. 8) again misrepresented what was before the

Supreme Court of Pennsylvania on consideration of the Petition for Change of Venue, "alleging facts that were denied by the Co-Guardians". *It is untrue that any of the facts alleged by petitioner were denied by the co-guardians, who had failed to file an answer.* The respondents then continued that Argument by falsely submitting that "the Supreme Court of Pennsylvania acting on the Answer and the Motion to Quash filed by the Co-Guardians did not find sufficient reasons to grant the Change of Venue" (pp. 8-9); which falsity is evident from the facts that no answer had been filed and the Motion to Quash had not been granted, being subsequently denied. *These incredible asseverations, repeatedly and recklessly made by the respondents and their counsel, should be quite enlightening to this Honorable Court as to why your petitioner has been so unduly burdened with the many problems they have inflicted upon her.* It is true that "At the time she presented this Petition there was no litigation then being considered by the Orphans' Court of Allegheny County nor were there any Petitions filed by the incompetent then pending or now pending before said Court" (p. 8); but it is respectfully submitted that had there been any such matters pending in the Orphans' Court, this matter would not have been ripe for presentation to the Supreme Court of Pennsylvania, and that conversely it is required that no such matters be pending in the Orphans' Court, as a requisite to consideration by the Supreme Court of Pennsylvania. Have not the learned attorneys for the respondents, in making such an absurd argument, overlooked or misapprehended the point that the converse of their argument is the acceptable one, with the result that their argument must be disregarded?

3. "The Incompetent Petitioner Filed in June of 1962 a Petition in the Orphans' Court of Allegheny County That the Original Appointment of the Guardians Was a Denial of Due Process and Other Constitutional Rights of the Incompetent as Well as the Allegations That the Appointment Was Procured by Fraud."

In the opening of this Argument (p. 9), *the respondents in referring to the prior proceedings below, again misrepresented that the Orphans' Court had dismissed the Petition on its merits.* After referring to the prior Pennsylvania Supreme Court proceeding (p. 10), they averred, "The incompetent and her present counsel never filed any direct appeals to the Supreme Court of the United States or petitioned for Writ of Certiorari. It is obvious, therefore, that the present Petition for Writ of Certiorari has assigned as reasons for the allowance of the Writ the denial of these same previous two Petitions which never had been appealed to this Court", actually asserting good grounds for convincing this Honorable Court how untenable and insupportable are their propositions. *What could have been the basis of any direct appeals to this Honorable Court? There certainly was no requirement for having proceeded then with a petition for writ of certiorari in this Honorable Court.*

The Tenor of Respondents' Brief Is Bad.

The attorneys for the respondents have made as vicious a presentation of their opposition as is conceivable. Not once did they refer to your petitioner as Mrs. Williams; but repeatedly, pointedly and unnecessarily have referred to her as "the incompetent". Their ungentlemanly attitude herein reflects their prior attitudes in the lower Courts, treating her as though she were not a citizen and begrudging her the picayune disbursements from her own Estate as though it had already been confiscated by them and their clients.

The Respondents' Brief Exhibits a Lack of Respect for This Honorable Court.

By presenting the unauthorized Brief which they did, instead of a brief in opposition pursuant to the Rules of this Honorable Court, the respondents' attorneys have evidenced their lack of respect because their Brief has so distorted the facts material to the consideration of the Questions Presented, and so confused the Reasons Relied on for the Allowance of the Writ, that your petitioner has been obliged to make a rather extensive Reply, most of which should have been obviated with a proper brief in opposition.

The unwarranted attacks repeatedly made upon your petitioner's "present counsel" for doing all possible to obtain the protection and enforcement of her legal and constitutional rights under the most adverse circumstances, are readily ignored; but the disrespect and lack of consideration for this Honorable Court and the rights of petitioner, should quickly be declared as reprehensible.

The Petitioner Asks Very Little of the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Mrs. Cora Hubbard Williams has been seeking the right to be heard on the issue of the fraud and misconduct of her adversaries in having procured an adjudication of incompetency against her. The lower Courts have stubbornly refused to afford her this right to be heard (a right which they have not given her and cannot take away). Because the Orphans' Court of Allegheny County, Pennsylvania, summarily refused her this right, guaranteed under the Constitution and laws of the United States, and the Supreme Court of Pennsylvania refused to compel said lower Court to do so, your petitioner then sought a change of venue.

Through her Petition for Change of Venue, an original proceeding in the Pennsylvania Supreme Court, petitioner again sought the right to be heard in an unbiased lower Court, which also was denied.

The only question thus before this Honorable Court of last resort is whether or not it will afford her the protection and enforcement of her rights under the Constitution and laws of the United States.

This entire proceeding is actually that simple.

Respectfully submitted,

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Pittsburgh, Pennsylvania 15219

NOV 4 1963

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 216

IN RE: ESTATE OF
CORA HUBBARD WILLIAMS

MOTION TO REMAND
And, In The Alternative,
PETITION FOR REHEARING

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 216

IN RE: ESTATE OF
CORA HUBBARD WILLIAMS

MOTION TO REMAND

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Mrs. Cora Hubbard Williams, respectfully moves this Honorable Court to vacate its Order entered on October 14, 1963, denying her petition for writ of certiorari (*United States of America, Petitioner, v. The Ohio Power Company*, 353 U.S. 98, 1957); then to grant the petition for writ of certiorari and vacate the Judgment of the Supreme Court of Pennsylvania sought to be reviewed (App. 11); and thereupon to reverse the said Judgment sought to be reviewed and remand (28 U. S. C. section 2106) the above entitled cause to the Supreme Court of Pennsylvania for further proceedings (*United States of America, Petitioner, v.*

Shotwell Manufacturing Company, et al., 355 U. S. 233, 1957, citing and relying upon *Communist Party v. Subversive Activities Control Board*, 351 U. S. 115, and *Mesarosh v. United States*, 352 U.S. 1); requiring the said Court to enter an adjudication on the merits of her Petition for Change of Venue (App. 2-11) as required. (*United States v. International Building Co.*, 345 U.S. 502, 506, and see also 354 U.S. 393); and, in the alternative,

PETITION FOR REHEARING

The Petition for Rehearing of Mrs. Cora Hubbard Williams, petitioner, respectfully prays that this Honorable Court will grant a rehearing of her Petition for Writ of Certiorari to the Supreme Court of Pennsylvania, and

In support of her Motion to Remand and, in the alternative, her Petition for Rehearing, it is averred:

1. The above captioned proceeding came before this Honorable Court on Cora Hubbard Williams' Petition for Writ of Certiorari to the Supreme Court of Pennsylvania, Respondents' Brief Sur Petition For Writ Of Certiorari and Petitioner's Reply Brief.

2. In the petitioner's said Petition, the Questions Presented were as follows:

> **(1) Does not a litigant have the right to be heard in advance of judgment, pursuant to the provisions of the Fourteenth Amendment to the Constitution of the United States?**

(2) When the State Courts have deprived a citizen of the right to be heard in advance of judgment, have not those State Courts deprived such litigant of property without due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States?

(3) When the trial Court of a state unlawfully has denied a litigant the right to a hearing on the issue of fraud in the procurement of an adjudication of incompetency, and the highest judicial tribunal of that state, which sanctioned such denial of hearing, has the authority and power in an original proceeding to change the venue of the cause but refuses to do so; has not the litigant thus been deprived of property and individual liberties without due process of law in violation of the provisions of the Fourteenth Amendment to the Constitution of the United States?

(4) Should not a Pennsylvania State Supreme Court Judgment, whereby a citizen has been deprived of property and important rights without due process of law, be reviewed and reversed by this Honorable Court?

3. *It was plainly evident from the said Petition, that all of the Questions Presented should have been answered in the affirmative.*

4. The Respondents' Brief Sur Petition For Writ Of Certiorari patently failed to conform to and comply with the usual and accepted practice, as well as the applicable Rules of this Honorable Court. Even if the respondents had complied with the accepted practice in this Honorable Court through a brief in opposition, they could not have complied with the provisions of paragarph 1 of Rule 24 for their failure to disclose "any matter or ground why the cause should not be reviewed by this Court".

5. Petitioner's Reply Brief showed how obviously untenable and insupportable were the respondents' Counter-Statement of Questions Presented, Counter-Statement of the Case and Argument; and thereupon readily disposed of their unsound and insupportable arguments as wholly without merit. Petitioner's Reply Brief then concluded (pp. 24-25) by analyzing the bad tenor of respondents' brief and the lack of respect for this Honorable Court shown therein, and manifesting how little Mrs. Williams asks of the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States,—*merely the right to be heard in advance of judgment.*

6. It is respectfully submitted that upon the record herein, this Honorable Court should review and reverse or review and remand; and that the only legal justification for the refusal to review and reverse, could be the fact that the Judgment sought to be reviewed was not adjudicated on the merits and, as a matter of practice, this Honorable Court declines to review unadjudicated issues. *United States of America, Petitioner, v. Shotwell Manufacturing Company, et al., Communist Party, v.*

Subversive Activities Control Board, Mesarosh v. United States, supra.

7. In view of the averments of the immediately preceding paragraph, and particularly because your petitioner has been seeking without any consideration or success whatever the protection and enforcement of her rights under the Due Process Clause which the jurists have sworn to uphold, this Honorable Court's attention is drawn to its pronouncements in the case of (p. 506) *United States v. International Building Co., supra,* as follows: "But unless we can say that they were an adjudication on the merits, the doctrine of estoppel by judgment would serve an unjust cause; it would become a device by which a decision not shown to be on the merits would forever foreclose inquiry into the merits. Estoppel by judgment includes matters in a second proceeding which were actually presented and determined in an earlier suit. See *Commissioner v. Sunnen, supra,* at 598"; as well as its decision reported in 354 U. S. 393, whereby it remanded a cause to the State Court to pass upon the issues of protection under the Due Process Clause.

8. A remand of the instant cause as sought therein is also required pursuant to this Honorable Court's power of supervision, *because it is so obvious that the Supreme Court of Pennsylvania failed to accompany the judgment sought to be reviewed (App. 11) with an opinion or even assign any reasons therefor.* Thus the Supreme Court of Pennsylvania did not comply with the usual and accepted practice relating to opinions of Court or with the provisions of the applicable Canons 19, 20 and 22 of the Canons of Judicial Ethics. In this respect

too, your petitioner has been deprived of her guaranteed right to due process of law. The said right to an opinion is also required by the Right to Know, and at this point it is submitted that the Judgment sought to be reviewed could not have been accompanied by a *supporting opinion*.

9. It is evident from the record and particularly from Mrs. Cora Hubbard Williams' unanswered, undenied and unopposed Petition for Change of Venue (App. 1-11) in the Supreme Court of Pennsylvania, that *petitioner has been deprived of her multi-million dollar Estate and the beneficial use and enjoyment of all of her income, as well as her individual liberties, without due process of law*. It is further evident therefrom that the said deprivations were originally effected through an *ex parte* hearing of which your petitioner did not receive notice and the right to be present with counsel and witnesses; and then said deprivations were subsequently effected and perpetuated through a denial of her right to be heard on the issue of the fraud and misconduct of her adversaries in the original procurement of the fraudulent adjudication of incompetency. *Thus it is respectfully submitted that the lowest form of cheating and defrauding, is cheating and defrauding through a fraudulent adjudication of incompetency.* What more persuasive compelling need for the protection and enforcement of one's right to due process of law could be presented to the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States?

10. Under the Constitution and laws of the United States, everybody is entitled to due process of law, as

sought herein, even the descendants of our Founding Fathers as is your petitioner herein. Prior to and since the entry of this Court's Order denying the instant petition for writ of certiorari, this Honorable Court nonetheless has granted writs of certiorari or remanded causes on innumerable less cogent applications than that of Mrs. Williams.

11. *Prior to this cause* advocated on behalf of Mrs. Williams, whose petition should and could be granted at no cost to the government, this Honorable Court sanctioned proceedings whereby nine Negro children were assisted in attending a public school in Little Rock, Arkansas, at an estimated cost to our government of $5,000,000.00. The Court, furthermore, granted petitions on behalf of persons charged with activities subversive to our government, meticulously guaranteeing even their rights to due process of law. It is also common knowledge that innumerable applications of admitted criminals who have confessed the commission of serious crimes have been granted in the interests of due process of law.

12. *Since the denial of Mrs. Williams' petition* (one week later), this Honorable Court continued its policy of such protection and enforcement of rights to due process of law. On October 21, 1963, it was reported in the *Pittsburgh Press* that this Honorable Court on that day (a) granted the petition of Mr. Vito Genovese, "recently identified as 'boss of all bosses' of the Cosa Nostra crime cartel", whereby this Court "In a brief order vacating the 1959 convictions of Genovese and nine co-defendants, the high court directed the Second

U. S. Circuit Court of Appeals to take another look at the case in light of a Supreme Court decision last term"; (b) this Court "Reversed the convictions of 373 Negro students found guilty of breach of the peace for demonstrating against segregation policies at Orangeburg, S. C., in 1960. The court had sent the case back to South Carolina last term for rehearing and the State Supreme Court had upheld the convictions. Today's brief order was a summary reversal of the state action"; (c) this Court, "Agreed to hear arguments on a challenge to Delaware's recent legislature reapportionment. Four cases from other states also will be heard this year"; and (d) this Court "Granted a hearing to Jesse James Arnold and George Dixon, two Negroes sentenced to death for a 1961 robbery-murder in North Carolina. Their appeal said systematic exclusion of Negroes from the grand jury invalidated the indictment".

13. In view of the averments of paragraphs 10, 11 and 12, your *petitioner repeats that she has asked very little of this Honorable Court in petitioning for the right to be heard in advance of judgment. It is a matter of record, and not denied that your petitioner is competent; and it is also a matter of record that Mrs. Williams has never been legally adjudicated an incompetent.* It has been petitioner's contention that she can establish at a hearing the point that the adjudication of incompetency was unlawfully obtained through the fraud and misconduct of her adversaries. *Whether or not her judges believe that she can establish this point, they indeed should not deprive her of the right to try.*

14. The fraudulent adjudication of incompetency and its concomitant afflictions constitute a vicious viola-

tion of Mrs. Williams' civil rights, which should not be sanctioned by any Court. The recent official haste to protect and enforce the civil rights of the Underprivileged Man has perhaps resulted in ignoring the protection and enforcement of civil rights of the Privileged Man. Officialdom is mistaken if it believes that wealthy white people, like Mrs. Cora Hubbard Williams, "can take care of themselves" and thus cannot be listed among the needy who require judicial protection of their safeguards against tyrannical judicial actions. This Honorable Court, therefore, should reconsider the contents of Mrs. Williams' Petition and her Reply Brief in order to make certain that the required protection and enforcement of important rights of a member of the so-called privileged class have not been overlooked or disregarded.

15. These shameful proceedings against petitioner were instigated and perpetuated by Mrs. Williams' only child, Mrs. Cora Williams Murdoch of Haverford, Pennsylvania, and those in combination with her. The hatefully adversary activities of this wayward daughter against her mother are incredible, and should not be judicially assisted.

16. In view of the foregoing, it is respectfully submitted that upon reconsideration of this cause, this Honorable Court should remand the cause for further proceedings, or grant a rehearing of the Petition for Writ of Certiorari.

WHEREFORE, Mrs. Cora Hubbard Williams, petitioner, respectfully prays that this Honorable Court will enter an Order granting her Motion to Remand or allowing her Petition for Rehearing.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania
412-471-6060

Dated: 4 November 1963.

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in paragraph 2 of Rule 58.

PAUL GINSBURG,
Counsel for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 216

IN RE: ESTATE OF
COL. HUBBARD WILLIAMS

MOTION FOR DOCKETING AND SUBMISSION OF PETITIONER'S MOTION TO REMAND FOR CONSIDERATION ON THE MERITS BY THE COURT

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 216

IN RE: ESTATE OF
CORA HUBBARD WILLIAMS

MOTION FOR DOCKETING AND SUBMISSION OF PETITIONER'S MOTION TO REMAND FOR CONSIDERATION ON THE MERITS BY THE COURT

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The petitioner, Mrs. Cora Hubbard Williams, respectfully moves this Honorable Court to enter an Order directed to Hon. John F. Davis, Clerk of this Court, requiring and compelling the said Clerk to perform his mandatory and ministerial functions in respect to the above entitled cause by docketing and submitting the petitioner's Motion to Remand to the Chief Justice of the United States and to the Associate Justices of the Supreme Court of the United States for consideration and adjudication on the merits thereof, and in support hereof avers:

Motion for Consideration by the Court.

1. On November 6, 1963, petitioner's Motion to Remand and, in the alternative, Petition for Rehearing, which fully complied with the accepted practice and the applicable Rules of this Court, were lodged in the Office of the Clerk of this Honorable Court. At that time the bonded Clerk had an absolute duty to docket those pleadings and submit them to the Court for consideration on the merits.

2. It is elementary that the functions of a Clerk are strictly ministerial and never judicial. Consequently, the Clerk was forbidden from examining those pleadings for the purpose of adjudicating them on the merits. Chief Deputy Clerk Cullinan, nonetheless, examined those authoritatively self-sustaining pleadings for such purpose, and erroneously concluded that both said pleadings together merely constituted a petition for rehearing, with the result that only the Petition for Rehearing was docketed and submitted to the Court and not the Motion to Remand. Mr. Cullinan's unlawful and unconstitutional usurpation of the functions of this Honorable Court were subsequently condoned and concurred in by Mr. Davis, the Clerk of the Court.

3. Mr. Cullinan's "judgment" was not only erroneous, but also unlawful. It is incredible that the rights of litigants in Courts of Record can be illegally and unconstitutionally destroyed at the whim and caprice of a Clerk in advance of filing the pleadings. In the first place, Messrs. Davis and Cullinan are not "learned in the law". In the second place, even if they had become worthy of being referred to as "learned in the law", it is obvious from their erroneous and unwarranted conclusions that they actually are not, because they ap-

parently were unable to comprehend either the presence of all the essential ingredients and elements in the Motion to Remand or this Honorable Court's pronouncements made in the cases cited therein as authority for your petitioner's right to have this cause remanded.

4. Counsel for petitioner complained to Mr. Cullinan about his actions in refusing to docket and submit the said Motion to Remand. Mr. Cullinan nevertheless refused to change his decision, but stated that if a new printed Motion to Remand were lodged with him, he would docket and submit it to the Court.

5. Counsel for petitioner thereupon forwarded a new authoritatively self-sustaining printed Motion to Remand, which was lodged with the Clerk on January 6, 1964. Mr. Davis then sanctioned and continued Mr. Cullinan's prior actions and refused to docket and submit the new Motion to Remand.

6. Is cannot be denied that Messrs. Davis and Cullinan by their actions have unlawfully unsurped judicial functions of this Honorable Court. Nor can it be denied that a most dangerous precedent could be set if this Honorable Court should not act now to retrieve and perform its own functions. In view of the nature of their usurpation and the evident bias and damages resulting therefrom to your petitioner, it is respectfully submitted that the greatest danger lies in the fact that Messrs. Davis and Cullinan supposedly perform their clerical functions in wide open offices where they are easily approached by interested parties; whereas the justices of this Honorable Court perform their judicial functions behind the closed doors of their chambers where they are unapproachable. Thus your petitioner

is justified in arguing that Clerks should never be permitted to perform any judicial functions, because of their availability and susceptibility to being improperly influenced.

7. Presumptuously, Messrs. Davis and Cullinan in their written communications to counsel for petitioner in effect assured him that this Honorable Court has delegated to them at least some of its functions. If so, which petitioner doubts, these Clerks have made it manifest that the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States have unlawfully delegated judicial powers and duties to persons whose authorized duties are merely ministerial. Has this unlawful delegation of judicial functions actually been made and authorized by this Honorable Court or has it really been a usurpation, as contended by your petitioner? This question must hastily be answered by this Honorable Court for its own sake!

8. It should be readily apparent to anybody really learned in the law that the arbitrary actions of these Clerks have brought about the severest deprivations of federally guaranteed property and civil rights that could possibly be inflicted upon any citizen. It is apparent from the Record that Mrs. Cora Hubbard Williams has been unsuccessfully seeking her guaranteed right to be heard in advance of judgment in order to have a fraudulent adjudication of incompetency opened and vacated, and to have her multi-million dollar Estate returned to her.

9. Since the illegal actions of these Clerks have deprived your petitioner of her federally guaranteed right

to litigate with due process of law, in a case involving deprivations of millions of dollars plus other rights which money cannot buy, they have become personally liable to your petitioner for the damages resulting therefrom.

10. Whether or not these Clerks are in favor of the Civil Rights Acts, they have violated them through their said usurpation of judicial functions, rendering themselves personally liable not only in District Court civil rights actions, but also in actions on their bonds.

11. It might be contended that the crucial question could be whether or not their unlawful usurpation of this Honorable Court's judicial functions has stemmed from an unlawful delegation. This question, of course, must be answered by this Honorable Court, because the Right to Know of the citizenry in general and the members of the Bar in particular, requires it. Once they know this answer, litigants and their attorneys will be in better position to know how to handle their cases.

12. Your petitioner contends, however, that for all practical purposes there is no such crucial question, because the delegation of such judicial functions is quite as unlawful as the usurpation of them. It necessarily follows that regardless of such actions whether by usurpation or delegation, the actions of these Clerks remain a nullity.

13. In view of the foregoing, it would seem that the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States of America have no choice but to grant the instant Motion.

Although your petitioner claims usurpation, and the Clerks claim delegation, the awful truth is that a meticulous regard for the fair and proper administration of justice in the Federal System indeed requires that this Honorable Court direct its Clerk to docket the petitioner's new Motion to Remand as of November 6, 1963, and then to submit copies thereof to the Chief Justice and the Associate Justices of this Honorable Court for its consideration and adjudication on the merits.

14. In view of the current unlawful performances of judicial functions by these Clerks, counsel for petitioner and other practitioners are certainly justified in wondering how many prior denials of authoritatively self-sustaining pleadings, ostensibly presented to this Honorable Court in other cases during the past several years have actually been denied by Chief Deputy Clerk Cullinan, with or without the knowledge and sanction of the then Clerk of the Court, instead of actually being denied by this Court after its own careful consideration of the merits.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 216

IN RE: ESTATE OF
CORA HUBBARD WILLIAMS

PETITION FOR REHEARING SUR MOTION FOR DOCKETING AND SUBMISSION OF PETITIONER'S MOTION TO REMAND FOR CONSIDERATION ON THE MERITS BY THE COURT

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 216

IN RE: ESTATE OF
CORA HUBBARD WILLIAMS

PETITION FOR REHEARING SUR MOTION FOR DOCKETING AND SUBMISSION OF PETITIONER'S MOTION TO REMAND FOR CONSIDERATION ON THE MERITS BY THE COURT

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Cora Hubbard Williams' Petition for Rehearing sur Motion for Docketing and Submission of Petitioner's Motion to Remand for Consideration on the Merits by the Court respectfully represents:

1. On February 17, 1964, this Honorable Court entered the following Order in the above entitled case: "The motion for docketing and submission of petitioner's motion to remand for consideration on the merits is denied."

2. It was quite evident from your petitioner's Motion for Docketing and Submission of Petitioner's

Motion to Remand for Consideration on the Merits by the Court, that the Clerk of this Court and his Chief Deputy Clerk had deliberately refused to docket and submit to this Honorable Court for its consideration her timely and authoritatively self-sustaining Motions to Remand. Although the duties and functions of the Clerks are strictly ministerial, the said Clerks nevertheless in so doing were exercising judicial functions. In other words, instead of docketing those Motions to Remand and submitting them to the Court for a judicial adjudication in accordance with the Constitution and laws of the United States and the usual and accepted practice; the Clerks themselves examined those pleadings and "judicially" concluded (erroneously) that they actually constituted petitions for rehearing (although applicable decisions of this Honorable Court cited therein made it plain beyond question that those pleadings truly were motions to remand) and thus they refused to docket those pleadings and submit them to this Honorable Court as they were duty bound to do.

3. The petitioner further alleged in the said Motion that those actions of the Clerks either constituted an unlawful usurpation by them of this Honorable Court's judicial functions, or had been an unauthorized delegation by this Court of judicial functions to the Clerks; and that in either event, the Clerks' actions were a nullity.

4. It was argued in the said Motion on behalf of petitioner, that one of the great dangers in allowing Clerks to make judicial decisions is the fact that they supposedly perform their clerical functions in wide open offices where they are easily approached by interested parties; whereas the justices of this Honorable Court

perform their judicial functions behind the closed doors of their chambers, where they are unapproachable.

5. In her said Motion for Docketing and Submission of Petitioner's Motion to Remand for Consideration on the Merits by the Court, it was averred that the acions of the Clerks resulted from an unlawful usurpation by them or delegation by the Court of judicial functions and duties. By the said Order of this Honorable Court entered February 17, 1964, denying the Motion, this Honorable Court has made it crystal clear that those judicial functions actually were delegated, incredible as that would seem.

6. Litigants like your petitioner who have entrusted the consideration and determination of their extremely important rights to the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States, should not be compelled by them to be subjected to the prejudicial whims and caprice of Clerks.

WHEREFORE, this Petition for Rehearing sur Motion for Docketing and Submission of Petitioner's Motion to Remand for Consideration on the Merits by the Court should be granted.

Respectfully submitted,

PAUL GINSBURG
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania
412-471-6060

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing Petition for Rehearing sur Motion for Docketing and Submission of Petitioner's Motion to Remand for Consideration on the Merits by the Court, pursuant to the provisions of paragraph 1 of Rule 58, is presented in good faith and not for delay.

Counsel for Petitioner
PAUL GINSBURG